

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Ethics Commission

212 East Washington Avenue, Third Floor Board Room, Madison, Wisconsin  
Tuesday, March 7, 2017, 9:00 a.m.

### Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice
- C. Minutes of November 9, 2016 Meeting Page 3
- D. Minutes of December 6, 2016 Meeting Page 7
- E. Minutes of February 23, 2017 Meeting Page 13
- F. Personal Appearances
- G. Requests for Advice Public Hearing: 2017-RA-002: Wittenwyler – Treatment Of 527 Organizations And Non-Resident Political Action Committees (PACs) Under Chapter 11, Wis. Stat. Page 15
- H. Delegation of Authority to Administrator – Informal Opinions Page 25
- I. Analysis of Holding Commission Meetings Outside of the Madison Office Page 27
- J. Update on the 2017-2019 Biennial Budget Process Page 29
- K. FY2018 Agency IT Strategic Plan Completed – Information Only Page 31
- L. Administrative Rules Update – ETH Chapters 6, 21, 25, and 26 Page 33
- M. Administrator’s Report Page 39
- N. Consideration of Future Agenda Items
- O. Closed Session
  - 1. Complaints and Investigations
  - 2. Requests for Advice
  - 3. Confer with Legal Counsel Regarding Potential Litigation
- P. Adjourn

Ethics Commission Meeting

March 7, 2017

Page 2

*The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), and (h). This notice is to inform the public that the Commission intends to convene in open session, but may move to closed session. The Commission plans to return to open session to adjourn following that closed session. WIS. STAT. § 19.85(2).*

WIS. STAT. §§19.50 & 19.55(3) No employee of the Commission may disclose information related to an investigation or prosecution under ch. 11, subchapter III of ch. 13, or ch. 19.

WIS. STAT. §19.85(1)(c) Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

WIS. STAT. §19.85(1)(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

WIS. STAT. §19.85(1)(h) The Commission's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.



# Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | ethics@wi.gov | ethics.wi.gov

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## Wisconsin Ethics Commission

Board Room  
212 East Washington Avenue  
Madison, Wisconsin  
November 9, 2016  
9:00 a.m.

### Open Session Minutes

Present: Katie McCallum (in-person), Peg Lautenschlager (by phone), Mac Davis (by phone), David Halbrooks (by phone), Robert Kinney (by phone), and Pat Strachota (by phone)

Staff present: Brian Bell, David Buerger, and Reid Magney

#### **A. Call to Order**

Vice Chair Katie McCallum called the meeting to order at 9:00 a.m.

#### **B. Report of Appropriate Meeting Notice**

Administrator Brian Bell reported that appropriate notice of the Commission meeting had been given to the public and news media.

#### **C. Personal Appearances**

No personal appearances.

#### **D. Request for Advice – Formal Opinion Request from the Wisconsin Association of School Boards Regarding the Administration of WIS. STAT. § 11.0104**

Staff Counsel Buerger presented the memo on pages 1-11 of the meeting materials.

Discussion.

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*Administrator*  
Brian M. Bell, MPA

**MOTION:** Refer the matter to the appropriate legislative oversight committees pointing out these issues and problems and asking them if they would interested in clarifying and correcting them by legislation. Moved by Commissioner Davis, seconded by Commissioner Kinney.

Discussion.

**MOTION:** Amend prior motion to include referral to the Attorney General to request an informal opinion as promptly as possible. Moved by Commissioner Davis, seconded by Commissioner Lautenschlager.

Discussion. Amendment attached to main motion by unanimous consent.

Roll call vote: Strachota:	Aye	Davis:	Aye
McCallum:	Aye	Kinney:	Aye
Halbrooks:	Aye	Lautenschlager:	Aye

Discussion.

**MOTION:** The Commission directs staff to issue informal guidance consistent with previous practice to all filing officers regarding the changes to exemption/termination required by 2015 Act 117 pending further guidance from DOJ or the Legislature. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager.

Discussion.

Roll call vote: Strachota:	No	Davis:	No
McCallum:	No	Kinney:	Aye
Halbrooks:	No	Lautenschlager:	Aye

Discussion of enforcement in the absence of further guidance.

## **E. Adjourn**

**MOTION:** To adjourn. Moved by Commissioner Halbrooks, seconded by Commissioner Kinney. Motion carried unanimously.

The Commission adjourned at 10:22 a.m.

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November 9, 2016 Wisconsin Ethics Commissioners meeting minutes prepared by:

November 9, 2016 Wisconsin Ethics Commissioners meeting minutes certified by:

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Katie McCallum, Vice Chair

March 7, 2017





# Wisconsin Ethics Commission

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## Wisconsin Ethics Commission

Board Room  
212 East Washington Avenue  
Madison, Wisconsin  
December 6, 2016  
9:00 a.m.

### Open Session Minutes

Present: Peg Lautenschlager, Katie McCallum, Mac Davis, David Halbrooks, Robert Kinney, and Pat Strachota

Staff present: Brian Bell, David Buerger, Richard Bohringer, Kyle Kundert, Molly Nagappala, and Adam Harvell

#### **A. Call to Order**

Commission Chair Peg Lautenschlager called the meeting to order at 9:09 a.m.

#### **B. Report of Appropriate Meeting Notice**

Administrator Brian Bell reported that appropriate notice of the Commission meeting had been given to the public and news media.

#### **C. Minutes of the October 10, 2016 Meeting**

Commission Chair Lautenschlager directed Commissioners to the draft meeting minutes in the meeting materials.

Commissioner Davis - Correct a spelling error on page 9.

**MOTION:** Approve the minutes as corrected. Moved by Commissioner McCallum, seconded by Commissioner Kinney. Motion carried unanimously.

*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Peg Lautenschlager | Katie McCallum | Pat Strachota

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*Administrator*  
Brian M. Bell, MPA

## D. Personal Appearances

There was one personal appearance by members of the public:

**Doug Haefele of the Assembly Democratic Campaign Committee** appeared regarding a campaign finance complaint his organization filed against the Republican Assembly Campaign Committee.

## E. Complaint and Investigation Procedures

Ethics Specialist Kundert presented the memo starting on page 13 of the meeting materials.

Discussion of front desk procedures to screen Ethics complaints from Elections complaints.

Discussion of a finding of no reasonable suspicion versus failing to find reasonable suspicion. Ethics Specialist Kundert will redraft to consistently use “failure to find reasonable suspicion”.

Discussion of non-jurisdictional complaint process.

**MOTION:** On page 14 of the materials, section B.2., amend complaint procedure to require staff to provide written notice to complainant when their complaint is dismissed due to facial deficiencies. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager.

Roll call vote: Strachota:	No	Davis:	No
McCallum:	No	Kinney:	Aye
Halbrooks:	No	Lautenschlager:	Aye

Discussion of investigations that are closed, but not terminated as defined by statute. Staff to add a section C.3.d. to address this situation where the Commission closes an investigation for other reasons.

Correction on page 16 of the materials, section C.1., the words “the law” should be inserted between “under” and “have occurred”. Adopted with unanimous consent.

Clarification on page 15 of the materials, section 2.b, sentence should read “Before voting on whether to take any action regarding the complaint, other than to dismiss, the Commission (via the Administrator) shall give the responding party(s) the opportunity to demonstrate to the Commission, in writing and within 15 days after receiving the notice that the Commission should take no action against the person based on the complaint.” Adopted with unanimous consent.

Clarification on page 15 of the materials, section 3.a. that staff will provide recommendations in writing where statutorily obligated.

**MOTION:** Approve the complaint and investigation procedures as amended. Moved by Commissioner Kinney, seconded by Commissioner McCallum. Motion carried unanimously.

## **F. Review of Formal Opinions**

Ethics Specialist Kundert presented the memo starting on page 21 of the meeting materials.

**MOTION:** The Commission makes a determination to withdraw all of the advisory opinions listed on pages 23-40, and directs staff to make available the withdrawn opinions with a clear disclaimer as to the lack of legal effect of all listed opinions. In addition, the Commission directs staff to inform the regulated community of the withdrawal of advisory opinions that referenced the previous campaign finance statutes, and included information on how to request a new advisory opinion, if interested. Moved by Commissioner Davis, seconded by Commissioner Strachota. Motion carried unanimously.

## **G. Reconsideration of 2005 Ethics Board Opinion 06**

Staff Counsel Buerger presented the memo starting on page 41 of the meeting materials.

**MOTION:** The Commission withdraws 2005 Eth Bd 06. Moved by Commissioner Davis, seconded by Commissioner Halbrooks. Motion carried unanimously.

## **H. Potential Legislation**

Administrator Bell presented the memo starting on page 47 of the meeting materials.

Discussion.

**MOTION:** The Commission places items 1-8, and 11 on the agency's legislative agenda. Moved by Commissioner Kinney, seconded by Commissioner Halbrooks. Motion carried unanimously.

Commission took a break at 10:50 a.m. and reconvened at 10:55 a.m.

## **I. Confidentiality of Commission Actions Related to Campaign Finance**

Staff Counsel Buerger presented the memo starting on page 51 of the meeting materials.

Discussion.

No action was taken.

## **J. Administrative Rules Update – ETH Chapters 6, 21, 25, and 26**

Staff Counsel Buerger presented the memo starting on page 53 of the meeting materials.

Discussion.

**MOTION:** The Commission approves the proposed administrative rules, ETH 6 and ETH 21. Moved by Commissioner Kinney, seconded by Commissioner Strachota.

Commissioner Davis raised a point of order and asked for division of the question. Chairperson Lautenschlager agreed division was appropriate.

**MOTION:** The Commission approves the proposed administrative rule, ETH 6. Moved by Commissioner Kinney, seconded by Commissioner Strachota. Motion carried unanimously.

Discussion. Chairperson Lautenschlager called the question.

**MOTION:** The Commission approves the proposed administrative rule, ETH 21. Moved by Commissioner Kinney, seconded by Commissioner Lautenschlager. Motion carried unanimously.

Roll call vote: Strachota:	No	Davis:	No
McCallum:	No	Kinney:	Aye
Halbrooks:	No	Lautenschlager:	Aye

Discussion.

**MOTION:** The Commission repeals the proposed administrative rule, ETH 21. Moved by Commissioner Davis, seconded by Commissioner Halbrooks. Motion carried unanimously.

Discussion.

**MOTION:** The Commission approves the repeal of administrative rule, ETH 25. Moved by Commissioner Kinney, seconded by Commissioner Strachota. Motion carried unanimously.

Discussion.

**MOTION:** The Commission directs staff to draft the text of the rule for ETH 26. Moved by Commissioner Kinney, seconded by Commissioner Davis. Motion carried unanimously.

## **K. Delegation of Authority to Administrator – Informal Opinions**

Staff Counsel Buerger verbally presented the Commission's options if it wished to delegate authority to the administrator under Wis. Stat. § 19.46(2) to issue informal opinions.

Discussion.

The Commission directs staff to draft a written policy for the Commission to consider that would permit the Administrator to issue informal opinions on behalf of the Commission under Wis. Stat. § 19.46(2). The policy should include that any requests for advice under this policy must be

time-sensitive, must be in writing, and must be reviewed by the Chairperson and Vice Chair (or their designees) prior to being issued.

#### **L. Nonpartisan Staff Policy**

Administrator Bell presented the memo starting on page 55 of the meeting materials.

Discussion. Add a footnote on page 59 to reflect that the Supreme Court Rule prohibiting judges from being a member of a political party was overturned in subsequent litigation.

**MOTION:** The Commission adopts the draft nonpartisan policy for staff on pages 62-63 of the materials and adopts the rest as comment supporting the policy. Moved by Commissioner Kinney, seconded by Commissioner Strachota. Motion carried unanimously.

#### **M. Administrator's Report**

Administrator Bell presented the memo starting on page 65 of the meeting materials.

Discussion. No action was taken.

Commission took a break for lunch at 12:15 p.m. and reconvened at 12:45 p.m.

#### **N. Closed Session**

**MOTION:** The Commission went into closed session pursuant to Wis. Stat. §§ 19.50, 19.55(3), 19.85(1)(g), (h). Moved by Commissioner Davis, seconded by Commissioner McCallum. Motion carried unanimously.

#### **O. Adjourn**

**MOTION:** To adjourn. Moved by Commissioner McCallum, seconded by Commissioner Halbrooks. Motion carried unanimously.

The Commission adjourned at 4:19 p.m.

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December 6, 2016 Wisconsin Ethics Commissioners meeting minutes prepared by:

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David Buerger, Staff Counsel

March 7, 2017

December 6, 2016 Wisconsin Ethics Commissioners meeting minutes certified by:

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Katie McCallum, Vice Chair

March 7, 2017



# Wisconsin Ethics Commission

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## Wisconsin Ethics Commission

Board Room  
212 East Washington Avenue  
Madison, Wisconsin  
February 23, 2017  
9:00 a.m.

### Open Session Minutes

Present: Katie McCallum, Timothy Van Akkeren, David Halbrooks, Peg Lautenschlager, and Pat Strachota (all Commissioners participated by phone)

Staff present: Brian Bell, David Buerger

#### **A. Call to Order**

Commission Chair Peg Lautenschlager called the meeting to order at 1:10 p.m.

#### **B. Report of Appropriate Meeting Notice**

Administrator Brian Bell reported that appropriate notice of the Commission meeting had been given to the public and news media.

Commissioner Chair Lautenschlager congratulated staff on the successful launch of the new agency website and welcomed Commissioner Van Akkeren to the Commission.

#### **C. 2017-19 Executive Budget**

Administrator Bell verbally presented a brief summary of the Governor's 2017-2019 Executive Budget proposal as it affects the Commission.

Commissioner Halbrooks requested staff to research whether per diems could be adjusted during a Commissioner's current term.

Commission Chair Lautenschlager requested with the consensus of the Commission that Administrator Bell summarize his report in writing and place it on the agenda for discussion at the March 7, 2017 meeting.

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Mac Davis | David R. Halbrooks | Peg Lautenschlager | Katie McCallum | Pat Strachota | Timothy Van Akkeren

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*Administrator*  
Brian M. Bell, MPA

**D. Closed Session**

**MOTION:** The Commission went into closed session pursuant to Wis. Stat. §§ 19.50, 19.55(3), 19.85(1)(g), (h). Moved by Commissioner McCallum, seconded by Commissioner Strachota. Motion carried unanimously.

The Commission came back into open session at 1:42 p.m.

**E. Adjourn**

**MOTION:** To adjourn. Moved by Commissioner McCallum, seconded by Commissioner Strachota. Motion carried unanimously.

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February 23, 2017 Wisconsin Ethics Commissioners meeting minutes prepared by:

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David Buerger, Staff Counsel

March 7, 2017

February 23, 2017 Wisconsin Ethics Commissioners meeting minutes certified by:

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Katie McCallum, Vice Chair

March 7, 2017



# Wisconsin Ethics Commission

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**DATE:** For the March 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Request for Formal Opinion – Mike Wittenwyler  
Regulation of Section 527 Organizations and Non-Resident PACs

## I. Introduction

Staff received the attached request for advice from Atty. Mike Wittenwyler (see Attachment A). Atty. Wittenwyler does not make this request on behalf of any particular organization, but instead is requesting the opinion for himself. The request asks the Commission to opine on: (1) registration thresholds applicable to section 527 organizations and non-resident PACs, (2) the applicability of contribution limits to each, and (3) the applicability of source restrictions to each.

## II. Facts

As Atty. Wittenwyler is not asking for an opinion based on any particular organization's acts, there are no relevant facts for the Commission to consider. This is solely a question of law.

## III. Analysis

Section 527 organizations are so named because they are formed pursuant to Section 527 of the Internal Revenue Code. Section 527 organizations are tax-exempt entities that are established and operated primarily for the purpose of influencing the selection, nomination, or appointment of any individual to any federal, state, or local public office, or office in a political organization. Section 527 organizations may raise and spend unlimited money for political activities without source restrictions, but they must also disclose their donors and cannot coordinate their activities with any campaign. All organizations that register and file reports with the Federal Election Commission are 527 organizations, but not all 527 organizations are federally registered political committees. Notable section 527 organizations include such groups as the Republican Governors Association, American Crossroads, and EMILY's List.

A non-resident PAC is a committee that does not maintain an office or street address in Wisconsin. [WIS. STAT. § 11.0103\(5\)](#). The term can cover PACs and independent-expenditure only committees (Super PACs) registered in other states or with the Federal Election Commission. Non-resident PACs, as they operate outside of Wisconsin, would be limited in the

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*Administrator*  
Brian M. Bell, MPA

contributions they can receive and the sources they can receive money from depending on the jurisdiction they are registered in.

### 1. Registration and Reporting Thresholds

Like any other political committee, a 527 organization or non-resident PAC is only required to register with the Ethics Commission and report on its activities upon reaching a specified amount of activity on elections for state or local office in Wisconsin. An organization is required to register as a PAC if: (1) the organization's major purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; and (2) the organization makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. WIS. STAT. §§ [11.0101\(25\)](#), [11.0502\(1\)](#).

An organization is required to register as an independent expenditure committee if: (1) the organization's major purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; and, (2) it makes or accepts contributions, makes disbursements, or incurs obligations in excess of \$2,500 in a calendar year. WIS. STAT. §§ [11.0101\(17\)](#), [11.0602\(1\)](#).

An organization may also be required to file reports as an "other person" with the Commission if it spends more than \$2,500 on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election for which the express advocacy was made and ending on the day of the election. [WIS. STAT. § 11.1001\(1\)\(a\)](#).

Non-resident committees, if required to register, must report to the Ethics Commission all disbursements made and obligations incurred with respect to an election for a state or local office in this state as well as all contributions from within the state. [WIS. STAT. § 11.0103\(5\)](#).

### 2. Contribution Limits

In addition to the above reporting requirements, if an entity registers as a PAC in Wisconsin, Wisconsin PAC contribution limits to candidates apply. If the organization registers as an independent expenditure committee then like any other Wisconsin IEC, it cannot make contributions to candidates.

If an entity is not required to register in Wisconsin, it may still contribute to Wisconsin candidates if it is not otherwise prohibited by [WIS. STAT. § 11.1112](#) (e.g., corporations). Referred to as "other persons" in Chapter 11, these entities are not required to register and are subject to the same contribution limits as PACs. [WIS. STAT. § 11.1101\(4\)](#).

### 3. Source Restrictions

If an entity registers as a PAC in Wisconsin, it is prohibited from accepting contributions from corporations, associations, labor unions, or tribes. [WIS. STAT. § 11.1112](#). If an entity registers as

an independent expenditure committee, no source restrictions apply. *Id.* If an entity is not required to register in Wisconsin, but chooses to contribute to Wisconsin committees, the law is unclear as to what, if any, source restrictions would apply.

Wisconsin’s source restriction provision, [WIS. STAT. § 11.1112](#), states:

“No foreign or domestic corporation, no association organized under ch. [185](#) or [193](#), no labor organization, and no federally recognized American Indian Tribe may make a contribution to a committee, other than an independent expenditure committee or referendum committee, but may make a contribution to a segregated fund as provided under s. [11.1104 \(6\)](#) in amounts not to exceed \$12,000 in the aggregate in a calendar year.”

“Committee” is defined by [WIS. STAT. § 11.0101\(6\)](#) as:

“A candidate committee, legislative campaign committee, political action committee, independent expenditure committee, political party, recall committee, and referendum committee.”

The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, [2004 WI 58](#), ¶44. Statutory interpretation begins with the language of the statute. *Id.* at ¶45. Statutory language is given its common, ordinary, and accepted meaning. *Id.* Statutory language should also be interpreted in the context in which it is used; not in isolation, but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. *Id.* at ¶46. If the meaning of the statute is plain, the inquiry ordinarily ends there. *Id.* at ¶45. However, a literal reading of a statute may be rejected if it would lead to an absurd or unreasonable result that does not reflect the legislature’s intent. *State v. Jennings*, [2003 WI 10](#), ¶11. Additionally, statutory interpretations that render provisions meaningless should be avoided. *Belding v. Demoulin*, [2014 WI 8](#), ¶17.

As the revised Chapter 11 is relatively new, it may be worth reviewing the legislative history that brought the issue to this point. Prior to the repeal and recreation of Chapter 11, 527 organizations and non-resident PACs were included in the definition of a committee and were subject to the same contribution and source restrictions as their Wisconsin counterparts. WIS. STAT. §§ [11.01\(4\)](#), [11.38\(1\)\(a\)1.](#) (2013) (held unconstitutional as to independent expenditures in *Wisconsin Right to Life v. Barland*, [751 F 3d. 804](#) (2014)). In the drafting of [2015 Assembly Bill 387](#) (enacted as [2015 Act 117](#) on December 16, 2015), 527 organizations and non-resident committees were omitted from the definition of a committee, which subsequently led to the question of what, if any, contribution limits now applied to them. [Senate Bill 295](#) (enacted as [2015 Act 261](#) on March 16, 2016), a bill to revise various elections procedures, was already drafted at that time and was amended to create a catch-all category of “other persons” to, in the words of the sponsor, “guarantee that everyone is subject to the limits.” There was no discussion of source restrictions for the “other persons” category at any point; however, if the Legislature intended to put “other persons” under the same contribution limits as PACs, it seems reasonable that they may also have intended to put “other persons” under the same source restrictions as PACs. As the Commission has already noted in its legislative agenda,

the Legislature appears to have overlooked the impact of the addition of “other persons” to other sections of Chapter 11 such as [WIS. STAT. § 11.1103](#), so it is not unreasonable that the Legislature may have also overlooked the impact in this case as well.

The absence of language addressing other entities in [WIS. STAT. § 11.1112](#) is expected as the entity may have no ties to Wisconsin and those sources may be perfectly permissible in the entity’s home jurisdiction. However, when such an entity chooses to contribute to a Wisconsin committee there is reason to question whether the entity should be subject to the same prohibitions on sources as candidates, parties, and PACs; and be required to make such a contribution only from permissible sources of funds.

While the law may be silent on the matter, the Commission should not lightly decide that silence equals assent. Currently, prohibited sources of funds like corporations cannot contribute to candidates at all and can only contribute money to political parties and legislative campaign committees through what is known as a “segregated fund”. [WIS. STAT. § 11.1112](#). These segregated funds are established by a political party or legislative campaign committee and the funds in them cannot be used to make contributions to a candidate committee or for disbursements for express advocacy. [WIS. STAT. §§ 11.1104\(6\), 11.1112](#). If corporations can give to 527s and non-resident PACs who can in turn give to Wisconsin committees without also segregating those corporate funds, it undermines the restrictions of [WIS. STAT. § 11.1112](#). It seems illogical that the Legislature would erect a barrier to such contributions only to allow them into campaigns via these entities.

While absence of statutory language may appear as a minor oversight which is tempting to read over in such cases the courts have said, “If a statute fails to cover a particular situation, and the omission should be cured, the remedy lies with the Legislature, not the courts.” *La Crosse Lutheran Hosp. v. La Crosse County*, 133 Wis. 2d. 335, 338 (1986). Accordingly, the Commission should not look to create a remedy here by reading words into the statute that are not there, but should refer the matter to the standing legislative oversight committees for remedial legislation as it has already done for [WIS. STAT. § 11.1103](#).

Finally, until the Legislature can address this issue, how should the Commission proceed? While the statutory tools available to the Commission may be inadequate to prohibit 527s and non-resident PACs from contributing to Wisconsin committees from otherwise prohibited sources, the Commission may rely on [WIS. STAT. § 11.1204](#) to prohibit any person from giving funds to another person for the purpose of making a contribution. Historically, this provision has been used to prevent a person or organization from using others to circumvent contribution limits or source restrictions. In keeping with that historical practice the Commission could rely on this provision to advise corporations, associations, labor unions, and tribes to refrain from intentionally passing contributions through an intermediary 527 organization or non-resident PAC to Wisconsin candidates. While this may be difficult to enforce, it should be sufficient to discourage a corporation, association, labor union, or tribe from deliberately using a 527 or non-resident PAC to circumvent the source restrictions of [WIS. STAT. § 11.1112](#).

#### **IV. Commission Determination**

The Commission may direct staff to offer Atty. Wittenwyler an opinion that determines the following:

1. A 527 organization or non-resident PAC is required to register only if it meets the applicable threshold established in Chapter 11;
2. If registered as a Wisconsin committee a 527 organization or non-resident PAC is required to adhere to Wisconsin contribution limits and source restrictions;
3. If not required to register as a Wisconsin committee that a 527 organization or non-resident PAC must still adhere to Wisconsin contribution limits for other persons; and
4. If not required to register as a Wisconsin committee that a 527 organization or non-resident PAC is not subject to Wisconsin source restrictions, but donors to such entities must refrain from contributing with the intent of circumventing Wisconsin law.

The Commission may also direct staff to offer an opinion that differs from the above consistent with its discussion today.

The Commission may also refuse to offer an opinion and may refer the matter to the Attorney General or the standing legislative oversight committees.

#### **V. Attachments**

- A. Request for Formal Opinion – Wittenwyler

February 1, 2017

**VIA HAND DELIVERY**

Wisconsin Ethics Commission  
212 East Washington Ave.  
Madison, WI 53703

**Regulation of Section 527 Organizations  
and Nonresident PACs**

Dear Chairperson Lautenschlager:

Pursuant to Wis. Stat. § 19.46(2), we are seeking the Wisconsin Ethics Commission’s (the “Commission’s”) opinion regarding the treatment of section 527 organizations and nonresident political action committees (“PACs”) under Chapter 11 of the Wisconsin Statutes. Specifically, we are seeking guidance on the following:

- Registration thresholds applicable to each;
- Applicability of contribution limits; *and*,
- Applicability of source restrictions.

Section 527 organizations are political organizations or funds established primarily for accepting donations and making expenditures in support of political activities that attempt to influence the selection of elected or appointed officials.<sup>1</sup> Section 527 organizations may make contributions to political committees, sponsor independent expenditures or engage in activities that may not be regulated by campaign finance laws such as sponsoring certain issue advocacy communications.<sup>2</sup>

A committee is a nonresident committee if it does not maintain an office or a street address in Wisconsin.<sup>3</sup> This includes PACs and independent expenditure-only committees (commonly

<sup>1</sup> Section 527 of the Internal Revenue Code refers to “exempt function” activity which is defined as “the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.” I.R.C. § 527(e)(2).

<sup>2</sup> Under the Internal Revenue Code, section 527 organizations include every type of political committee including candidate campaign committees, political party committees and PACs. However, during the last twenty years, “section 527 organizations” are generally thought of as organizations that influence elections in a manner that is primarily outside the scope of state or federal campaign finance law – even though the definition under the Internal Revenue Code is not limited to these organizations. In this letter and for purposes of this advisory opinion request, “section 527 organizations” are *not* political committees under state or federal campaign finance law.

<sup>3</sup> Wis. Stat. § 11.0103(5).

REC-01-FEB2017 09:02:29

referred to as “super PACs”) registered in other states or with the Federal Election Commission (“FEC”).

The source and amount of financial support for a section 527 organization is generally not limited by the Internal Revenue Code (the “Code”). Individuals, corporations, cooperatives, labor organizations and federally-recognized Indian tribes may contribute unlimited amounts to a section 527 organization. Similarly, source restrictions and contribution limits vary in each state and under federal law. Accordingly, many nonresident committees may accept contributions from corporations or labor organizations.

### **Wisconsin Registration and Reporting Thresholds**

A nonresident committee is required to register with the Commission and report activity only if it meets the “applicable thresholds for submitting reports.”<sup>4</sup> Section 527 organizations are not expressly addressed in statute but likewise must register with the Commission and report activity only if they meet the applicable thresholds. As a result, chapter 11 requires a person, including a nonresident committee or a section 527 organization, to register as a Wisconsin PAC or independent expenditure committee (“IEC”) when specific thresholds are met. PAC registration is required if:

- The person’s stated purpose is express advocacy or more than 50% of its total spending in a 12-month period is on express advocacy, expenditures made to support or defeat a referendum, and contributions made to a candidate committee, legislative campaign committee, or political party; *and*,
- It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.<sup>5</sup>

Registration as an IEC is required if:

- The person’s stated purpose is making independent expenditures or more than 50% of its spending in a 12-month period is on independent expenditures and expenditures in support or opposition of a referendum; *and*,
- It makes or accepts contributions, makes disbursements or incurs obligations in excess of \$2,500 in a calendar year.<sup>6</sup>

In either case, if both thresholds are met, registration must occur within 10 business days of the receipt of the first contribution that exceeds the \$2,500 threshold.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Wis. Stat. § 11.0101 (25)(a).

<sup>6</sup> Wis. Stat. § 11.0602.

<sup>7</sup> Wis. Stat. §§ 11.0502; 11.0602.

Once registered as a PAC or IEC, the registrant must comply with applicable Wisconsin law reporting requirements, including disclosure of essentially all contributions received and disbursements made.<sup>8</sup> A nonresident committee that registers, however, must report only contributions received from Wisconsin sources and disbursements made with respect to an election for a state or local office in Wisconsin.<sup>9</sup>

In addition to these reporting requirements, once registered as a Wisconsin PAC, chapter 11 source restrictions and contribution limits apply.<sup>10</sup> An IEC is not subject to source restrictions or contribution limits.<sup>11</sup>

### **Wisconsin Contribution Limits for “Other Persons”**

A section 527 organization or nonresident PAC that does not meet the chapter 11 registration thresholds is a permitted source of contributions to Wisconsin committees since each is an unincorporated organization.<sup>12</sup> Referred to as “other persons” by chapter 11, their contributions to candidates, political action committees, political parties, legislative campaign committees and segregated funds of political parties and legislative campaign committees are subject to the same contribution limits as those applicable to PACs.<sup>13</sup> Like PACs, the contributions of a section 527 organization or nonresident PAC to a Wisconsin PAC, independent expenditure committee, referendum committee or recall committee are not limited.<sup>14</sup>

### **Wisconsin Source Restrictions for “Other Persons”**

A section 527 organization or nonresident PAC that does not meet the chapter 11 registration thresholds is not subject to Wisconsin law source restrictions. Both may receive donations from a restricted source (including an affiliated source such as the sponsoring organization of a nonresident PAC) and remain a permitted source of contributions to Wisconsin committees. That is, chapter 11 does not restrict contributions by a section 527 organization or nonresident PAC based on its sources of funding.

Wisconsin’s source restrictions only apply to Wisconsin committees. Chapter 11 is unambiguous: corporations, cooperatives, labor organizations and tribes may not make direct

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<sup>8</sup> Wis. Stat. §§ 11.0504(1)(a); 11.0604(1)(a).

<sup>9</sup> Wis. Stat. § 11.0103(5).

<sup>10</sup> Wis. Stat. § § 11.1101(3) 11.1112.

<sup>11</sup> Wis. Stat. § 11.1112.

<sup>12</sup> Id.

<sup>13</sup> Wis. Stat. §§ 11.1101(3), (4); 11.1104(3), (4), (6).

<sup>14</sup> Wis. Stat. § 11.1104(1), (11), (12), (13).

contributions to Wisconsin candidates, PACs, political parties, legislative campaign committees or recall committees.

Corporations, cooperatives, and tribes. No foreign or domestic corporation, no association organized under ch. 185 or 193, no labor organization, and no federally recognized American Indian Tribe may make a contribution to a committee, other than an independent expenditure committee or referendum committee, but may make a contribution to a segregated fund as provided under s. 11.1104 (6) in amounts not to exceed \$12,000 in the aggregate in a calendar year.<sup>15</sup>

This is a prohibition on direct contributions to Wisconsin committees by these sources only. It does not apply to a section 527 organization or nonresident PAC that has received donations from one or more of these sources. Had the state legislature intended to prohibit contributions by a section 527 organization or nonresident PAC under such a circumstance, it could have expanded the source restriction beyond direct contributions to Wisconsin committees. For example, federal law requires unregistered donors who do not qualify as federal committees to make donations only from funds that are permissible under federal law.<sup>16</sup> Moreover, the FEC has express authority to review the records of an unregistered donor to verify that permissible funds were used.

The state legislature chose not to restrict contributions by a nonresident PAC or section 527 organization based on its donors. Nonresident PACs and section 527 organizations were not subject to contribution limits under 2015 Wisconsin Act 117. In March 2016, legislation was enacted to place contribution limits on “other persons” that includes section 527 organizations and nonresident PACs as well as other unincorporated organizations.<sup>17</sup> Had the state legislature intended to further restrict a section 527 organization’s or nonresident PAC’s contributions to Wisconsin committees, it could have done so at that time.

Lastly, the chapter 11 prohibition on contributions-in-the-name-of-another do not apply to section 527 organizations or nonresident PACs.<sup>18</sup> These prohibitions are in place to prevent earmarked and concealed contributions that allow a contributor to evade state contribution limits and/or source restrictions by using a third-party straw person who acts under the direction and control of the individual or entity reimbursing the straw-person for the political contribution. In contrast, when an individual or organization makes a non-earmarked contribution to a section 527 organization or nonresident PAC, it is relinquishing control and ownership of those funds. The contribution is also comingled with the funds of other donors and loses its identity. The

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<sup>15</sup> Wis. Stat. § 11.1112.

<sup>16</sup> See 52 U.S.C. § 30125; 11 CFR § 102.5.

<sup>17</sup> See 2015 Wisconsin Act 261.

<sup>18</sup> See Wis. Stat. § 11.1204(1).

contribution is also likely subject to public disclosure as a result of periodic reporting requirements applicable to the section 527 organization or nonresident PAC.

Without a fundamental change in how non-earmarked PAC contributions are viewed, the prohibition on making a contribution in the name of another person does not apply to a section 527 organization or nonresident PAC. If the state legislature had intended to require a donor to a section 527 organization or nonresident PAC to be considered as the source of a contribution to a Wisconsin committee, statutory tools were available to it such as major donor and intermediary reporting requirements. Moreover, if the contribution-in-the-name-of-another provision did apply to section 527 organizations or nonresident PACs, it would also then apply to contributions to Wisconsin PACs and other committees that then make contributions to other Wisconsin committees using their respective funds.

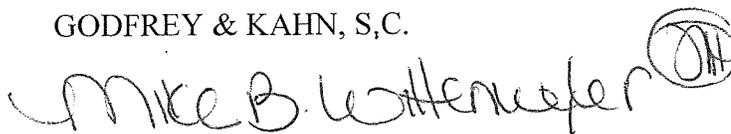
### Conclusion

In sum and based on the forgoing, we are seeking the Commission's confirmation of our interpretation of state law:

- A section 527 organization or nonresident PAC is required to register as a committee in Wisconsin only if it meets the applicable chapter 11 thresholds;
- If required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law source restrictions and contribution limits applicable to that committee;
- If not required to register as a Wisconsin committee, a section 527 organization or nonresident PAC must abide by the Wisconsin law contribution limits applicable to "other persons;" *and,*
- If not required to register as a Wisconsin committee, Wisconsin law source restrictions do not apply to the donations to a section 527 organization or nonresident PAC.

Please let us know if you have questions or need any additional information. We look forward to receiving the Commission's reply.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler  
Jodi Jensen

cc: Brian Bell  
David Buerger

16719377.1

# Wisconsin Ethics Commission

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**DATE:** For the March 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Delegation of Authority for Informal Opinions

At the December 6, 2016 meeting, the Commission directed staff to draft a policy to authorize the Commission Administrator or his or her designee to issue an informal written advisory opinion, consistent with [WIS. STAT. § 19.46\(2\)\(b\)](#). That section of the statutes states the following:

*(b)*

1. *The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.*
2. *Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.*
3. *Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.*

Additionally, [WIS. STAT. § 19.46\(2\)\(a\)4](#) requires the Administrator to report the issuance of informal opinions to the Commission and the options the Commission may exercise upon receiving such a report:

4. *At each regular meeting of the commission, the commission administrator shall review informal advisory opinions requested of and issued by the administrator and that relate to recurring issues or issues of first impression for which no formal advisory opinion has been issued. The commission may determine to issue a formal*

*advisory opinion adopting or modifying the informal advisory opinion. If the commission disagrees with a formal or informal advisory opinion that has been issued by or on behalf of the commission, the commission may withdraw the opinion, issue a revised formal or informal advisory opinion, or request an opinion from the attorney general. No person acting after the date of the withdrawal or issuance of the revised advisory opinion is exempted from prosecution under this subsection if the opinion upon which the person's action is based has been withdrawn or revised in relevant degree.*

Based on the statutes it appears that the Legislature's intent was that upon the Commission delegating the authority to issue informal opinions, there would automatically be a built in process by which the Commission would be required to review informal opinions issued where no controlling formal opinion had been previously issued.

### **Potential Policy Criteria on the Delegation of Authority to Issue Informal Opinions**

At its December 6, 2016 meeting, the Commission proposed several criteria for its policy regarding the delegation of authority to issue informal opinions. The staff has compiled a list of potential criteria that the Commission may wish to consider adopting as a part of its policy. The Commission may choose to select any combination of these criteria or add its own additional criteria to establish a policy for delegating the authority to issue informal opinions.

1. The request for an informal opinion must be received in writing (e.g., email, or a typed or written letter).
2. If a request for an informal opinion is received verbally (e.g., by telephone or in person), the Administrator may memorialize the request in writing and ask the requestor to confirm that such a record reflects their request.
3. The issuance of an informal opinion must be provided in writing (e.g., email, or a typed or written letter).
4. Every informal opinion issued shall be consistent with all applicable formal advisory opinions issued by the Commission, statute or other law, and case law as required by [WIS. STAT. § 19.46\(2\)\(b\)1](#).
5. The Commission Administrator may issue an informal opinion consistent with the policy adopted by the Commission
6. The Commission's Staff Counsel may issue an informal opinion consistent with the policy adopted by the Commission.
7. The Commission's Staff Counsel may issue an informal opinion consistent with the policy adopted by the Commission and upon approval by the Commission Administrator.



# Wisconsin Ethics Commission

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**DATE:** For the March 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Cost of Commission Meetings Held Outside of Madison

At a previous meeting of the Ethics Commission, Commissioners directed staff to research the cost of holding a Commission meeting at a location somewhere in Wisconsin, outside of the Ethics Commission's Madison office. This memorandum provides a basic overview of the factors likely to impact the cost of hosting a meeting outside of the Madison office.

The most significant variable would likely be the number of staff members attending the meeting in person. The cost per staff member is estimated at \$150 (\$82 for a hotel room, \$8 for breakfast, \$10 for lunch, and \$20 for dinner, plus lunch and dinner for the day prior based on state reimbursement rates).

This analysis assumes that, at a minimum, the Administrator and Staff Counsel would attend the meeting in person, along with one additional staff member for the purpose of recording meeting minutes. Depending on the agenda, it may be beneficial to have other particular staff members present. Others could also be available via web-presence (e.g., using GoToMeeting).

Staff members would likely also travel by use of a state vehicle. Assuming that the number of staff in attendance was limited to those who could share one vehicle, the average cost of vehicle rental and mileage charges would be approximately \$50 to \$80.

The second set of variables to consider is travel costs for Commissioners. Commissioners receive mileage reimbursement at the rate of \$0.51 per mile. Depending on the location selected, some Commissioners may receive more or less for mileage reimbursement compared to a meeting held in Madison. The choice of location also may impact whether or not some Commissioners leave home early enough or return home late enough to receive reimbursement for breakfast or dinner. The choice of location also may influence whether or not some or all of the Commissioners request lodging.

Based on the analysis outlined in this memo, and assuming that the Commission could find a public space to use at no cost, the estimated cost of holding a meeting outside of Madison would likely range between approximately \$725 and \$1,300 depending on the variables outlined in this memo.

*Wisconsin Ethics Commissioners*  
Mac Davis | David R. Halbrooks | Peg Lautenschlager | Katie McCallum | Pat Strachota | Timothy Van Akkeren

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*Administrator*  
Brian M. Bell, MPA





# Wisconsin Ethics Commission

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**DATE:** For the March 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Commission Administrator

**SUBJECT:** Update on the 2017-19 Biennial Budget Process

At its February 23, 2017 teleconference meeting, the Commission directed staff to provide a written summary of elements of the Governor's 2017-2019 Executive Budget Proposals that could potential impact the Ethics Commission. This memo presents those elements that would impact all state agencies, as well as those that specifically impact the Ethics Commission.

The Governor's proposal included the following:

1. Transition to a self-insured group health model beginning on January 1, 2018, which is anticipated to save all state agencies \$20,000,000 GPR in fiscal year 2017-18 and \$40,000,000 GPR in fiscal year 2018-19, for a combined total of \$60,000,000 GPR over the biennium.
2. Provide funding for expected inflation in fringe benefits costs in each year and funding in fiscal year 2018-19 for general wage adjustments of 2 percent on both September 30, 2018, and May 26, 2019, for state employees in the compensation reserve.
3. Consistent with the Ethics Commission's budget request, reduce spending authority for the materials and services appropriation from \$11,500 annually to \$4,500 annually. The Ethics Commission requested this change due to decreasing program revenue for copies of requested documents.
4. The Governor recommends reducing commissioner meeting per diem allocations from \$454.11 per day to \$50 per meeting to align with the statutory per diems of other state boards and commissions and because ethics commissioners are no longer required to be retired judges. Under the Government Accountability Board, board members were required to be retired judges and received a daily per diem equal to the amount paid to a reserve judge sitting in a circuit court.

The Governor's budget proposal did not include the Commission request to change the gifts and grants appropriation from an annual appropriation to a continuing appropriation.

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# Wisconsin Ethics Commission

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**DATE:** February 22, 2017

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Brian M. Bell, MPA  
Ethics Commission Administrator

**SUBJECT:** FY2018 Agency IT Plan

## I. Top five IT Goals

1. Manage all statements of economic interests (SEIs) electronically, as well as all quarterly reports from State of Wisconsin Investment Board trustees and employees.
2. Upgrade the Campaign Finance Information System (CFIS) to a system that is considerably more user-friendly, allows for customization by staff, and is built on a mobile-responsive design.
3. Upgrade the Eye On Lobbying application to a mobile responsive design.
4. Leverage IT solutions across all aspects of the agency to minimize physical records.
5. Provide enhanced customer service by improving available resources online (e.g., training materials, manuals, video instruction).

## II. Agency Projects

The Ethics Commission does not have any IT projects starting, ongoing, or ending in FY2018 that are expected to cost \$1 million or more.

## III. Potential Agency Projects

Potential Project Name: Modernize the Campaign Finance Information System
Description: Update the web application for campaign finance reporting to allow staff greater ability to customize the functionality of the system and provide a website that is mobile-responsive
Anticipated Total Cost: unknown
Resourcing: GPR, PR

Potential Project Name: Modernize the Eye On Lobbying website
Description: Update the web application for lobbying reporting to provide a website that is mobile-responsive
Anticipated Total Cost: unknown
Resourcing: PR

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*Administrator*  
Brian M. Bell, MPA

**IV. IT Infrastructure Projects or Expenditures**

The Ethics Commission does not have any IT infrastructure projects or expenditures starting, ongoing, or ending in FY2018 that are expected to cost \$100,000 or more.

**V. Agency Plans to Participate in the Active Directory Migration Project**

The Wisconsin Ethics Commission is already migrated to the accounts active directory.

**VI. Plans to Enhance the Agency’s Cybersecurity Position**

The Ethics Commission does not have any planned enhancements to the agency’s cybersecurity position in FY2018.

**VII. Status of Progress Toward Completion of the Agency Portfolio Assessment**

- Not Started
- In Progress / Estimated Completion Date: April 30,2016
- Completed (please send a copy with your IT Plan submission)

**VIII. Additional Issues/Activities (OPTIONAL)**

Plans to relocate to a new office location at the end of calendar year 2018 may require coordination with DET to relocate IT resources (network, phones, etc.).

# Wisconsin Ethics Commission

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**DATE:** For the March 7, 2017 Commission Meeting

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Administrative Rule Update

## **I. Chapter ETH 6 (Procedure)**

At the Ethics Commission's December 6, 2016 meeting the Commission approved the text of this rule. This rule is ready for submission to LRB, but staff is waiting for the other rules current being promulgated by the Commission to be in a similar posture to minimize duplication of effort.

## **II. Chapter ETH 21 (Advisory Opinions)**

At the Ethics Commission's December 6, 2016 meeting it directed staff to repeal this rule. After consultation with LRB, staff drafted the attached amended scope statement for the Commission to review and approve before submitting it to the Governor's office.

The draft Amended Statement of Scope is labeled Attachment A following this memorandum.

## **III. Chapter ETH 25 (Forms)**

At the Ethics Commission's December 6, 2016 meeting it directed staff to repeal this rule. Staff has drafted the attached scope statement for the Commission to review and approve before submitting it to the Governor's office.

The draft Statement of Scope is labeled Attachment B following this memorandum.

## **IV. Chapter ETH 26 (Settlement Schedule)**

At the Ethics Commission's December 6, 2016 meeting it directed staff to draft the text of this rule. Staff is currently in the process of drafting this rule.

**AMENDED STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
WISCONSIN ETHICS COMMISSION**

**Rule No.:** ETH Ch. 21

**Relating to:** Ethics Commission Practice and Procedure

**Rule Type:** Permanent

**1. Detailed description of the objective of the proposed rule:**

The Ethics Commission proposes to repeal this rule in its entirety.

**2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The Ethics Commission has not authorized the staff of the Commission to issue advisory opinions on behalf of the Commission. If the Commission chooses to authorize the issuance of such opinions pursuant to Wis. Stat. § 19.46(2)(b), it plans to do so by adoption of an agency policy rather than an administrative rule.

**3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wisconsin law provides for the Commission to authorize the commission administrator or his or her designee to issue informal advisory opinions on the Commission's behalf.

**Wis. Stat. § 19.46 Conflict of interest prohibited; exception.**

**(2)(b)**

1. The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.
2. Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.

3. Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.

The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

Wis. Stat. § 11.1304(17):

**11.1304 Duties of the ethics commission.** The commission shall:  
**(17)** Promulgate rules to administer this chapter.

Wis. Stat. § 19.48(1):

**19.48 Duties of the ethics commission.** The commission shall:  
**(1)** Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

Wis. Stat. § 227.11(2)(a):

**227.11 Extent to which chapter confers rule-making authority.**  
**(2)** Rule-making authority is expressly conferred on an agency as follows:  
**(a)** Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

4. **Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Commission estimates that it will use approximately 0.05 FTE staff to repeal this rule. This includes time required for research, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings, legislative review and adoption, and communicating the final repeal of the rule to affected persons and groups. The Commission will use existing staff resources to develop this rule.

5. **List with description of all entities that may be affected by the proposed rule:**

Candidates, political parties, other registered committees; lobbyists and lobbying principals; state public officials; and the general public may be affected by the proposed rule.

6. **Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The Wisconsin Ethics Commission is unaware of any existing or proposed federal regulation that is applicable to this rule.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Wisconsin Ethics Commission anticipates the rule having no economic impact. This proposed rule includes no significant economic impact on small businesses.

**Contact person:** David P. Buerger  
david.buerger@wisconsin.gov (608) 267-0951



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Brian M. Bell, MPA  
Administrator  
Wisconsin Ethics Commission

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Date Submitted

**STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
WISCONSIN ETHICS COMMISSION**

**Rule No.:** ETH Ch. 25

**Relating to:** Ethics Commission Forms

**Rule Type:** Permanent

**1. Detailed description of the objective of the proposed rule:**

The Ethics Commission proposes to repeal this rule in its entirety.

**2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The Ethics Commission continues to prescribe a variety of forms necessary to the proper administration of Ch. 11, subchapter III of Ch. 13, and subchapter III of Ch. 19; as authorized by Wis. Stat. § 19.48(2). However, maintaining an administrative rule listing such forms is burdensome and does not appear to be statutorily required.

**3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

There is no specific statutory authority for an administrative rule prescribing forms, but the Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

Wis. Stat. § 11.1304(17):

**11.1304 Duties of the ethics commission.** The commission shall:  
**(17)** Promulgate rules to administer this chapter.

Wis. Stat. § 19.48(1):

**19.48 Duties of the ethics commission.** The commission shall:  
**(1)** Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

Wis. Stat. § 227.11(2)(a):

**227.11 Extent to which chapter confers rule-making authority.**  
**(2)** Rule-making authority is expressly conferred on an agency as follows:  
**(a)** Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to

effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

**4. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Commission estimates that it will use approximately 0.05 FTE staff to repeal this rule. This includes time required for research, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings, legislative review and adoption, and communicating the final repeal of the rule to affected persons and groups. The Commission will use existing staff resources to develop this rule.

**5. List with description of all entities that may be affected by the proposed rule:**

Candidates, political parties, other registered committees; lobbyists and lobbying principals; state public officials; and the general public may be affected by the proposed rule.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The Wisconsin Ethics Commission is unaware of any existing or proposed federal regulation that is applicable to this rule.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Wisconsin Ethics Commission anticipates the rule having no economic impact. This proposed rule includes no significant economic impact on small businesses.

**Contact person:** David P. Buerger  
david.buerger@wisconsin.gov (608) 267-0951



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Brian M. Bell, MPA  
Administrator  
Wisconsin Ethics Commission

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Date Submitted



# Wisconsin Ethics Commission

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DATE: For the March 7, 2017 Meeting

TO: Members, Ethics Commission

FROM: Brian M. Bell, MPA  
Commission Administrator

SUBJECT: Ethics Commission Administrator's Report

## **Commission Administration**

### Personnel Updates

Kyle Kundert has accepted a position with the San Francisco Ethics Commission and his last day in the office will be March 10<sup>th</sup>. Kyle has made great contributions in all program areas – campaign finance, lobbying, and ethics. He has also been directly involved in improving our efforts related to complaints, investigations, and requests for advice. Kyle's departure is rather bittersweet; we are happy for him to start this new chapter in his career, but he will certainly be missed. Hopefully, this will be a good opportunity for us to network with another Ethics Commission and offer opportunities for collaboration and sharing best practices.

We are excited to welcome to our team Julie Nischik, who started on February 6<sup>th</sup> as our Office Management Specialist. Julie will serve as the primary contact for our agency on a variety of administrative functions such as personnel management, budget, finance, procurement, and records management. The staff is working with DOA to recruit for our vacant Elections Specialist position, as well as planning to recruit for Kyle's position once it becomes vacant, and Julie will take the lead on those efforts.

As a result of 2015 Wisconsin Act 150, \$6 million was allocated to support lump sum discretionary merit compensation (DMC). Based on percentage of GPR salary and fringe benefits, the Ethics Commission is allotted \$1,849 to support lump sum DMC payments. We will be requesting those funds by submitting our annual plan for discretionary merit compensation and discretionary equity and retention adjustments by the April 14, 2017 deadline.

### Accepting Credit Card Payments

Staff continues to work with DOA on accepting credit card payments. Implementing credit card payments for lobbying fees was set as first priority. The staff is awaiting approval from DOA and US Bank to begin testing the new payment process. Once the credit card process for the lobbying program is complete, staff plan to next begin working on accepting credit cards for

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*Administrator*  
Brian M. Bell, MPA

campaign finance filing fees, and then for settlement offers and general petty cash transactions (e.g., public records requests). The Department of Administration has been delayed in working on this project for us due to efforts to complete the statewide year end close in the new financial system. The estimated time to complete these enhancements is undetermined due to reliance on DOA and US Bank.

### Ethics Commission's Public Website

On February 1, 2017, the Ethics Commission launched its new public content management site: <https://ethics.wi.gov>. Staff is continuing to work with the vendor, Wisconsin Interactive Network (WIN) to add a few minor enhancements to the site. This project was completed right on schedule and at no cost to the agency. The Ethics Commission will save approximately \$1,100 annually compared to the hosting costs of the old website. Additional information about the project is available on the website under the resources overview in the resource finder tool in the press release: [https://ethics.wi.gov/Resources/NewEthicsWebsite\\_PressRelease.pdf](https://ethics.wi.gov/Resources/NewEthicsWebsite_PressRelease.pdf) and in the fact sheet: [https://ethics.wi.gov/Resources/FactSheet\\_Ethics.pdf](https://ethics.wi.gov/Resources/FactSheet_Ethics.pdf). WIN will continue to provide ongoing support and maintenance for the site, as well as assist with enhancements with up to four hours of work per month.

The Staff is working on updating information on the website related to advisory opinions issued by the previous boards (Government Accountability Board, Ethics Board, and Elections Board), as well updating available training materials.

### **Attorney General Opinion Requests**

On February 21, 2017, staff received an update from the Wisconsin Department of Justice in regard to the two pending requests for an Attorney General Opinion. The request regarding the ability of a candidate committee to claim exemption from campaign finance reporting in the year the candidate appears on the ballot is still being evaluated. The second opinion request was in regards the Constitutionality of [WIS. STAT. §13.68\(6\)](#) and the ability of the Commission to suspend a lobbyist's ability to lobbying on behalf of a principal as a result of the principal failing to file timely reports. As of February 21, 2017, that Attorney General opinion was in the process of being drafted.

### **Campaign Finance**

#### CFIS Maintenance and Support Contract

Staff completed negotiations with PCC for support and maintenance of the Campaign Finance Information System (CFIS) and signed the contract covering fiscal year 2017 (July 1, 2016 – June 30, 2017) on February 6, 2017. We are currently in discussions with the vendor regarding the time and cost required to upgrade CFIS to their newest software version, and whether that would be possible prior to 2018 and the gubernatorial race, or if it would have to be done in 2019. The staff is also exploring options to have a new system built specifically for Wisconsin. If an upgrade is not possible during this calendar year, we will begin negotiating the renewal of the FY2017 maintenance and support contract.

### 2017 January Continuing Reports

As of February 23, 2017, there were 1,025 2017 January continuing reports filed. Of those reports, only 2 were not filed electronically. And 928 (91%) were filed by the reporting deadline. There are 24 committees which have not yet filed the report.

### 2017 Spring Pre-Primary Reports

All 2017 spring candidates filed their 2017 pre-primary report by the deadline of February 13, 2017. There were 104 reports filed for the 2017 pre-primary reporting period, and all of them were filed electronically.

### 2017 Spring Pre-Election Reports

The next campaign finance report due will be the 2017 Spring Pre-Election report, which will be due by March 27, 2017, and including all activity of each registered committee since their previous report through March 20, 2017.

### Local Campaign Finance Violation Referrals

[Wis. Stat. §11.0102\(3\)\(e\)](#) requires the following of local filing officers:

*Notify the commission, in writing, of any facts within the filing officer's knowledge or evidence in the officer's possession, including errors or discrepancies in reports or statements and delinquencies in filing which may be grounds for civil action or criminal prosecution. The commission may transmit a copy of the notification submitted under this paragraph to the district attorney.*

Based on previous discussions of the Commission and continuance of past practices, staff will continue to refer such matters to the appropriate district attorney. The Commission does not currently possess the capability or resources that would be required to review each local jurisdiction complaint or campaign finance report auditing.

## **Lobbying**

### Legislative Liaison Reports, July - December 2016

State Agency Legislative Liaison reports covering July 1<sup>st</sup> to December 31<sup>st</sup> were due by January 31, 2017. As of February 24, 2017, 6 reports were not yet certified.

### Statements of Lobbying Activities and Expenditures (SLAE), July-December 2016

The Statements of Lobbying Activities and Expenditures (SLAE) for the final six-month period of the 2015-2016 Legislative Session, covering July 1 through December 31, 2016 were due by January 31, 2017. In addition to ongoing 15-day reports, the next SLAE due will be on July 31<sup>st</sup>, covering January 1 through June 30, 2017. This reporting period typically includes the largest

volume of report time and expenditures due to the state budget. Late SLAEs are addressed separately from this report.

### Principal Registration, Lobbyist Licensing, and Authorizations for the 2017-2018 Session

As of February 24, 2017, there were 572 lobbying principals registered, 473 lobbyists licensed, and 1,222 lobbyist authorizations completed through the Eye On Lobbying site for the 2017-2018 Legislative Session.

### 2017-2018 Legislative Session Lobbying Training

Between December 15, 2016 and February 8, 2017 staff held eight lobbying training seminars at the Ethics Commission office. Approximately 115 members of the lobbying community attended and staff received numerous compliments on each presentation. Some interest in a Milwaukee-located lobbying principal hosting a training session was expressed, but no plans have been made at this time. (Government Accountability Board staff did hold one such Milwaukee training session in 2013, which was not well attended.)

### **Code of Ethics and Financial Disclosure**

#### Design of a new SEI system

Staff continues to work on the development of the new application for statements of economic interest reporting. Staff is currently developing the user interface for the new system. No further significant updates are available at this time.

#### Statements of Economic Interests

On a regular basis, staff continues to process SEIs for newly nominated and appointed officials, and responds to requests to view statements. Candidates elected at the 2016 General Election were required to file their SEI by January 24<sup>th</sup>. As of February 21, 2017, one candidate had not yet filed. Late SEIs are addresses separately on the agenda.

As of February 21, 2017, there are 2,369 officials required to file an SEI in 2017. The 2016 annual SEI filing will be due by May 1, 2017. As of February 21, 1,409 officials have already turned in their SEI, and 948 of those SEIs have already been entered into our database.

#### State of Wisconsin Investment Board Quarterly Reports

The quarterly reports due by January 31, covering October 1 through December 31, 2016 have all been received and copies have been delivered to the Legislative Audit Bureau, as required by statute. The next quarterly reports will be due by May 1, 2017, covering January 1 through March 31<sup>st</sup>.

### Summary of Settlement Agreements for Calendar Year 2016

In calendar year 2016, the Government Accountability Board and the Ethics Commission completed 41 settlement agreements related to violations of campaign finance and lobbying laws, totaling \$11,859. There were 28 settlement related to campaign finance, 13 settlements related to lobbying, and no settlements related to the code of ethics or financial disclosure. A summary of the settlements is provided following the report.

In the matter of	Comm. ID	Year	Audit Area	Audit Category	Reporting Period	Settlement Paid:
Ashton Kirsch for State Assembly	0105513	2016	Campaign Finance	Anonymous Contributions over \$10	2014 Calendar Year (CF)	\$170.00
Bowen 4 Action	0105535	2016	Campaign Finance	Corporate Contributions (CF)	2014 Calendar Year (CF)	\$150.00
Republican Party of Marathon County	0300335	2016	Campaign Finance	Corporate Contributions (CF)	2014 Calendar Year (CF)	\$2,950.00
Republican Party of Trempealeau County	0300204	2016	Campaign Finance	Corporate Contributions (CF)	2014 Calendar Year (CF)	\$400.00
Quinn for Assembly	0105505	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2014 Calendar Year (CF)	\$2,500.00
Republican Party of Rock County	0300168	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2014 Calendar Year (CF)	\$187.00
Citizens for Richards	0103633	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$140.00
Citizens to Elect Rebecca Persick Judge	0105624	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$168.00
Friends of Donna Seidel	0104282	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$188.00
Friends of Kate Findley	0105341	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$160.00
Friends to Elect Tricia Hanson	0105618	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$127.00
Portage County Democratic Party	0300144	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$151.00
Republican Party of Manitowoc County	0300165	2016	Campaign Finance	Incomplete Report /Cash Balance (CF)	2015 Calendar Year (CF)	\$317.00
Friends for Brad Pearson	0105821	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$250.00
Friends of Eric Wimberger	0105594	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$100.00
Friends of Fred Kessler	0100994	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$100.00
Friends of Julie Meyer	0105817	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$100.00
Mandy Wright for Assembly	0105227	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$100.00
Re-Elect District Atty Beranek	0105299	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Election	\$150.00
Bowen 4 Action	0105535	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Primary	\$100.00

In the matter of	Comm. ID	Year	Audit Area	Audit Category	Reporting Period	Settlement Paid:
Comm to Elect Lena C. Taylor	0104170	2016	Campaign Finance	Late CF report (CF)	2016 Fall Pre-Primary	\$100.00
AGC - Conduit	0900009	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$100.00
AGCWI PAC	0500325	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$100.00
Friends of Koth	0105268	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$200.00
NRA Political Victory Fund	0500704	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$100.00
SCI Statewide Conduit Fund	0900276	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$300.00
United Assn Local 118 PAC	0500904	2016	Campaign Finance	Late CF report (CF)	2016 July Continuing	\$100.00
Danou for Assembly	0104405	2016	Campaign Finance	Late CF report (CF)	2016 September Continuing	\$100.00
Bruce Colburn		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$75.00
David Riemer		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$60.00
Edward Lump		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$150.00
Heather MacKinnon		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$258.00
Kim Schroeder		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$150.00
Linda Eason		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$75.00
Scott Suder		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$37.50
Shahla Werner		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$70.50
William Abrams		2016	Lobbying	Lobbyist Contributions (L/CF)	2015 Calendar Year (CF)	\$225.00
United Council of UW Students		2016	Lobbying	Late SLAE (L)	2015-2016 Session Period 1 (L)	\$350.00
United Council of UW Students		2016	Lobbying	Late SLAE (L)	2015-2016 Session Period 2 (L)	\$500.00
Gogebic Taconite		2016	Lobbying	Late SLAE (L)	2015-2016 Session Period 3 (L)	\$250.00
Wisconsin Health and Physical Education		2016	Lobbying	Late SLAE (L)	2015-2016 Session Period 3 (L)	\$50.00
<b>TOTAL</b>						<b>\$11,859.00</b>