

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, Wisconsin Room
Madison, Wisconsin
Tuesday, April 9, 2019, 9:00 a.m.

Open Session Agenda

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|--|---------|
| A. Call to Order | |
| B. Report of Appropriate Meeting Notice – Staff Counsel | |
| C. Approval of Minutes of Prior Meetings | |
| 1. Minutes of March 5, 2019, Open Session Meeting | Page 3 |
| D. Personal Appearances | |
| E. Ethics Opinion Review | Page 7 |
| F. 2019 ETH 01 – Service on Boards of Directors | Page 15 |
| G. Consideration of Additional Legislative Recommendations | Page 31 |
| H. Administrator Performance Evaluation Process | Page 33 |
| I. Calendar Year 2020 Meeting Dates | Page 37 |
| J. Administrative Rules Update | Page 39 |
| K. RDA Draft – Settlement Agreements | Page 57 |
| L. Staff Report | Page 61 |
| M. Consideration of Future Agenda Items | |
| N. Closed Session | |
| 1. Requests for Advice | |
| 2. Complaints and Investigations | |
| O. Adjourn | |

Future Ethics Commission Meetings Scheduled:

- Tuesday, June 18, 2019 at 9:00 AM
- Tuesday, August 20, 2019 at 9:00 AM
- Tuesday, December 3, 2019 at 9:00 AM

The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), (h), or WIS. STAT. § 19.851. 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 following that closed session, as outlined in the above agenda. 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) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

- (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.
- (h) Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

WIS. STAT. § 19.851(2) The commission shall hold each meeting of the commission for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the commission in closed session under this section.



Wisconsin Ethics Commission

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Wisconsin Ethics Commission

101 E. Wilson Street
St. Croix Room
Madison, Wisconsin
March 5, 2019
9:00 a.m.

Open Session Minutes

Present: Katie McCallum, Tamara Packard, Mac Davis, David Halbrooks,
Pat Strachota, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Julie Nischik, Rich Bohringer,
Harry Broderick, Colette Greve, and Caroline Russell

A. Call to Order

Commission Chair Katie McCallum called the meeting to order at 9:01 a.m.

B. Report of Appropriate Meeting Notice

Staff Counsel David Buerger reported that appropriate notice of the Commission meeting had been given to the public and news media.

C. Approval of Minutes of Prior Meeting

1. Minutes of December 11, 2018 Open Session Meeting

MOTION: Approve the December 11, 2018 open session minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

D. Personal Appearances

There was one personal appearance by a member of the public.

Mike Wittenwyler appeared on behalf of the Association of Wisconsin Lobbyists to provide comment on the review of guideline 1211-14.

Mr. Wittenwyler requested the Commission provide clear guidance and interpretation of state law and expressed concern for the proposed changes to the guideline 1211-14 on how legislative or lobbying days are held and certain items of value are paid for by state officials.

Mr. Wittenwyler stated on lobbying day prior agencies have allowed an exception, where generally the law says an official should not pay a lobbyist or lobbying principal for something, in this instance it was allowed. At these events, the lobbyists and principals collect money from public officials to attend the event. With the new guideline, lobbying principals would now have to allow the officials to attend the events for free. The guideline is unclear on how to invite a specific group to an event without giving some advantage. AWL has no problems with the way lobbying days were held in the past, and want to continue to charge for the event, and not provide something to officials for free.

E. Appearance by Department of Justice Representatives

Charlotte Gibson, Administrator of the Division of Legal Services, and Corey Finkelmeyer, Deputy Administrator of the Division of Legal Services introduced themselves to the Commission and provided information on opinion requests.

Ms. Gibson informed the Commission that the Administrator and Staff Counsel can make referrals to them for opinion requests and her office can assist with the process. Ms. Gibson provided an update on two opinion requests from the Commission. The request for an opinion on spring elections was too broad and needs to be more focused for the Attorney General to provide a response. The second request has been drafted, and will be brought to the new administration, and the Commission can expect to receive that in the next couple of months.

F. 2017 Act 108 Report

Staff Counsel David Buerger presented the memo on page 7 of the meeting materials.

The Commission provided no comments or changes to the report.

G. 2017 Act 369 Report

Commission staff Colette Greve presented the memo on page 13 of the meeting materials.

The Commission discussed the process for submitting guidelines to the Legislative Council and directed staff to contact the Legislative Council to get more information on this new process and further define what is included in the definition of guidance.

H. Guideline 1211-14 Review

Staff Counsel David Buerger presented the memo on page 21 of the meeting materials.

The Commissioners and staff discussed the specifics of item 3, Food and Drink that the Official Purchases at an Event Intended for and Conducive to the Discussion of State Governmental Processes, Proposals, or Issues (From Any Person) on page 28 of the meeting materials. Staff Counsel stated that lobbying day events could still be held but would need to be open to the public if the lobbying principals wanted to provide food or drink to officials.

The Commission expressed interest in having others weigh in on the proposed changes, including the legislature.

MOTION: The Commission directs staff to submit the revised guideline to the Legislative Reference Bureau for publication for public comment. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

I. Ethics Opinions Schedule Review

Commission staff Colette Greve presented the memo on page 41 of the meeting materials. The Commission agreed with the proposed schedule to review Ethics Opinions.

J. Administrative Rules Update

Staff Counsel David Buerger presented the memo on page 43 of the meeting materials.

Staff requested further direction from the Commission on electronic communication, as addressed in ETH 1. Commission staff suggested specifying font, size, and contrast. The Commission decided not to include those specifications in the rule. Commissioner Davis requested including tickets and business cards in the list of items exempt from attribution requirements.

Staff Counsel will make changes to the draft and present a final draft for review at the April 5, 2019 meeting.

K. Staff Report

Commission Administrator Daniel Carlton presented the report on page 63 of the meeting materials.

L. Discuss New August Meeting Date

The Commission changed the August meeting date to August 20, 2019.

M. Consideration of Future Agenda Items

Commissioner Davis requested the administrator review process be included at the April meeting. Commissioner Davis also requested discussing the 2020 meeting dates at the next meeting.

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 Strachota, seconded by Commissioner Packard. Motion carried unanimously.

1. Requests for Advice
2. Complaints and Investigations

O. Return to Open Session

P. Adjourn

MOTION: To adjourn. Moved by Commissioner Halbrooks, seconded by Commissioner Van Akkeren. Motion carried unanimously.

Meeting adjourned at 2:57 p.m.

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March 5, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist April 9, 2019

March 5, 2019 Wisconsin Ethics Commission meeting minutes certified by:

Tamara Packard, Vice Chair April 9, 2019



Wisconsin Ethics Commission

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DATE: For the April 9, 2019 Meeting

TO: Members, Wisconsin Ethics Commission

FROM: Colette Greve, Ethics Specialist
Presented by David Buerger, Staff Counsel

SUBJECT: Review of Ethics Opinions of Previous Boards

FOR COMMISSION ACTION

The Commission may decide to:

- a. Withdraw, modify, and reaffirm opinions as recommended by staff,
- b. Withdraw, modify, and reaffirm opinions as amended by today's discussion, or
- c. Direct staff to continue review of the opinions

Background

The Commission is continuing to review formal advisory opinions of the previous boards. Staff has conducted an initial review of opinions related to Statements of Economic Interests (“SEIs”), Commission confidentiality and jurisdiction, employment conflicting with official duties, and state official conduct post-employment.

The attached spreadsheet provides a link to each opinion, a summary, staff recommendation, and some additional notes related to why opinions require revisions or are being recommended for withdrawal.

Relevant Statutes

WIS. STAT. §§ [19.42](#) and [19.44](#) provide definitions and requirements for filing SEIs. Relevant statute sections for the opinion subjects listed above include WIS. STAT. §§ [19.45](#), [19.46](#), [19.56](#), and [19.59](#). There have been no major statutory changes relevant to the review of these opinions that would make any advice given in them inconsistent with current law.

Opinions Recommended for Withdrawal

Staff recommends that opinions be withdrawn for two reasons, either they are inconsistent with the Commission's current policy, advice, guidelines, or the opinions are vague and provide no substantive analysis.

1. [Eth. Bd. Op. 02-08](#) is the only opinion that staff is recommending be withdrawn because it provides no substantive analysis or citations to statute.

For the following opinions staff requests a determination from the Commission as to whether the opinion should be withdrawn:

2. [Eth. Bd. Op. 06-01](#) – The main issue in this opinion is the doctrine of incompatibility of offices, which is not within the Commission’s jurisdiction. The opinion properly recommends that the requestor seek advice from the Attorney General for this issue. Commission staff have received phone calls from individuals in the regulated community with facts similar to that which are contained in this opinion. There is some relevant advice given in paragraph 3, that falls within the Commission’s jurisdiction, which provides that a school board member could serve as a coach if the position is not compensated.
3. [Eth. Bd. Op. 92-32](#) - The advice given within this opinion is mostly accurate, but the opening summary and closing paragraph may be inconsistent with advice that the previous Boards and the Commission have given. The summary states that the “official’s appointing authority has determined the private pursuit will not conflict with his or her official duties or reflect adversely upon the official’s agency.” This articulation does not necessarily conform with opinions of the Commission or past Boards. Generally, when an individual requests advice regarding a potential conflict of interest, the Commission defers to the facts presented by the individual in determining whether there is a conflict that would adversely affect his or her duties as a state official. The Commission would not typically seek further facts from the agency concerning whether there would be a conflict. While the Commission may consider whether the official’s appointing authority has determined whether a conflict exists, the Commission is not bound by that determination. The Commission may opine that, notwithstanding the representations of the requestor and/or the opinion of his or her appointing authority, the scenario presented would be a conflict. This opinion could be retained with a revision to clarify that the Commission relies upon the factual representations of the requestor and that, while relevant, a determination by the official or by the official’s appointing authority whether there is a conflict that would adversely affect their duties as a state official is not binding on the Commission.

Opinions Recommended for Revision

4. [Eth. Bd. Op. 97-07](#) – This opinion requires revision because it discusses the period in which lobbyists may contribute to candidate campaign finance committees in paragraph 4. In 2013, the time period for lobbyist to make personal campaign contributions was amended. This was addressed when the Commission reviewed the lobbying opinions. Staff would revise the dates that the window for lobbyists to give personal contributions is open and the statutory citations.

Staff also recommends deleting the last section of discussion titled “Public Policy Considerations,” as well as number 4 and 5 in the summary and conclusion that reference this section of the discussion.

5. [Eth. Bd. Op. 98-13](#) – Staff recommends revising this opinion to delete the footnote (footnote 2) citing to past Board’s meeting minutes and the sentence that references this footnote

(paragraph 3). The discussions at the Board's meetings should not be used in providing formal advice.

6. [Eth. Bd. Op. 98-03](#) and [Eth. Bd. Op. 08-01](#) – These two opinions were reviewed by the GAB in 2008 and there has been some clarifying annotations added to the end of each opinion that was meant to be modifying language. Staff will mark these opinions as revised.

Attachments:

- A. Ethics Opinions Spreadsheet for April 9, 2019 Commission Meeting

Subject	Opinion Number	Summary of opinion	Staff Recommendation
Statements of Economic Interests			
Statements of Economic Interests	Eth. Bd. Op. 93-07	Section 19.44(1)(a), Wisconsin Statutes, requires a state public official who is a lawyer to identify on the individual's Statement of Economic Interests those clients of the individual's law firm for which the individual provides representation in dealings with third parties or for which the individual is authorized to act as part of overall supervisory responsibility for the firm's providing those services. An official need not identify clients of the official's firm for which the official did not act as an authorized representative or agent in dealings with third parties or act in a supervisory capacity with respect to other attorneys in the firm who did provide such services. OEB 93-7 (May 7, 1993)	Reaffirm
Statements of Economic Interests	Eth. Bd. Op. 03-07	The Ethics Board advises: (1) that a state employee in the classified service appointed to act as a division administrator is a state public official subject to the substantive requirements of the Ethics Code; and (2) that the individual is required to file a Statement of Economic Interests	Reaffirm
Commission Jurisdiction and Confidentiality			
Local Code - Jurisdiction	Eth. Bd. Op. 98-16	The Ethics Board advises that §19.59, Wisconsin Statutes, does not empower a county to amend its ethics code to require officials and employees whose duties involve oversight, regulation, or reporting with respect to campaigns for county office to identify the campaigns in which the official or employee is involved, together with a description of the involvement. (November 27, 1998)	Reaffirm
Local Code - Commission Jurisdiction; Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 99-01	Except in the uncommon instance in which the teacher's appointment is for a specified term or at the pleasure of the appointing authority, a public school teacher is not a local public official covered by §19.59, Wisconsin Statutes. In an instance in which a teacher is a local public official, the teacher should consult with the school district's legal counsel to review the specific circumstances to determine whether §19.59 restricts participation in a program open to teachers whose benefits include lodging and meals in connection with a training seminar in another state, the provision of certain equipment, reimbursement for released time (with prior approval), expense reimbursement for presentations (with prior approval), and lodging and meals in connection with an annual reunion.	Reaffirm
Local Code - Confidentiality	Eth. Bd. Op. 03-13	The person or persons on whose behalf a town attorney sought the Ethics Board's advice are entitled to keep the Board's opinion confidential. Whether the attorney directed the letter to the Ethics Board on half of the Town, or on behalf of the Town's chair, is a question of fact the Board cannot resolve.	Reaffirm
Local Code - Jurisdiction	Eth. Bd. Op. 06-01	Whether a member of a school board may serve as an unpaid coach in the school district is primarily a question of compatibility of offices. Generally, the Ethics Code prohibits a member of a school board to use his or her position to obtain a position as an employee in, or a contract with, the school district.	Potential Withdraw - See further discussion in corresponding memo
Employment Conflicting with Officials Duties; Dual Employment/Outside Employment, Directors/Members of Boards and Organizations			
Legislators; Officers, Directors and Members of Organizations	Eth. Bd. Op. 92-18	Statutes administered by the Ethics Board do not restrict a legislator's service as a member of a corporation's board of directors, even for pay, as long as the legislator is asked to serve for reasons independent of and unrelated to holding state office. If the legislator is asked to serve because of membership in the legislature, or if the corporation should employ a lobbyist at any time, then the legislator may continue to serve but may not accept any fees or compensation for the service. OEB 92-18 April 28, 1992	Reaffirm

Employment Conflicting with Official Duties; Dual Employment; Disqualification; Officers, Directors, and Members of Organizations	Eth. Bd. Op. 92-32	A state public official should not accept a paid position as a member of a private company's advisory board unless: a. the official's appointing authority has determined the private pursuit will not conflict with his or her official duties or reflect adversely upon the official's agency and b. the official can demonstrate that the position is offered primarily for reasons independent of holding a state public office. If the official accepts the private position, the official should not: a. use the state's time or resources while engaging in company-related activities; b. use his or her official position to benefit the company; c. participate in an official decision that will affect the company in a way significantly different from the way the decision affects other companies; or d. use confidential information the official acquires from his or her state job to help the company. OEB 92-32 (November 25, 1992)	Potential Withdraw - See further discussion in corresponding memo
Employment Conflicting with Official Duties; Improper Use of Office; Judges	Eth. Bd. Op. 94-02	Statutes administered by the Ethics Board are not an impediment to a municipal judge's serving as a mediator, arbitrator, or mini-trial judge in dispute resolution as long as: (1) the official does not serve in matters over which the official, as a municipal judge, might have jurisdiction; (2) the official does not use his or her public position to obtain private employment; and (3) the official does not use the municipality's time, facilities, supplies, or services not generally available to the public in pursuing the official's private endeavors. OEB 94-2 (April 14, 1994)	Reaffirm
Employment Conflicting with Official Responsibilities; Lobbying Law; Use of State Time, Facilities, Supplies and Services	Eth. Bd. Op. 97-07	The Ethics Board advises: (1) that neither the Ethics Code nor lobbying law restrict an individual from running for a partisan elective state office nor establishing a personal campaign committee for the individual's candidacy while the individual is a full-time appointed state public official; (2) that the lobbying law provides that an individual may not solicit or accept from a lobbyist or a lobbying principal a contribution for the individual's candidacy for a partisan elective state office except between June 1 and the day of the general election in the year of the candidate's election; (3) that the Ethics Code provides that a state public official may not rely on the state's time, facilities, services, or supplies in soliciting campaign contributions; (4) that although not compelled by the Ethics Code, a state public official should not solicit or accept campaign contributions from individuals, businesses, or organizations that (a) are subject to regulation by, or apply for contracts with, or grants or loans from, the official's agency; (b) are members of the immediate family of such individuals; or (c) are associated with such businesses or organizations as principal shareholders, officers, or directors; and (5) that although not compelled by the Ethics Code, a full-time appointed state public official should not simultaneously hold appointed state public office and seek election to a different government position without first obtaining the appointing authority's informed consent that the individual's candidacy will neither unduly affect the performance of official duties nor adversely and unduly affect the effectiveness of the individual's agency. (September 5, 1997)	Revise. The section regarding lobbyist campaign contributions needs to be updated to reflect current statutes. Also, the "Public Policy Considerations" section would be deleted and #4 and #5 in the summary/conclusion paragraph.
Employment Conflicting with Official Responsibilities	Eth. Bd. Op. 97-14	The Ethics Board: (1) advises that the Ethics Code does not require an appointed official of a state agency to resign if the official runs for election to public office; and (2) reaffirms the advice given in 1997 Wis Eth Bd 7. ¶ 1. You have asked about the propriety of an appointed official of a state agency establishing a committee to explore running for election to public office. ¶ 2. The matter about which you have asked is a personnel matter not governed by Wisconsin's Ethics Code. Nothing in the Ethics Code requires an appointed official of a state agency to resign if the official runs for election to public office. Whether the official may simultaneously retain his position with the agency and seek election to a government position rests in the discretion of the official's appointing authority. ¶ 3. The Ethics Board reaffirms its recent opinion addressing a like matter, 1997 Wis Eth Bd 7; and commends it as a guide for the agency. (September 26, 1997)	Reaffirm, with note that Eth. Bd. Op. 07-07 was revised.
Representation of Clients	Eth. Bd. Op. 98-03 Listed as 98-02 error	The Ethics Board advises: that a salaried state public official not represent an individual for compensation in a legal claim against a state authority, its employees, or employees of the state.	Revised - Staff will mark this as revised because of GAB annotations added in 2008 to modify the opinion.
Lobbying Law; Improper Use of Office	Eth. Bd. Op. 02-08	The Ethics Board advises: Neither the Ethics Code nor lobbying law appears to restrict a legislator's working as a consultant to a company that is a broker-dealer that assists institutional money managers in identifying investment opportunities	Withdraw for lack of substantive analysis

Improper Use of Office	Eth. Bd. Op. 04-01	In order to comply with §19.45 (2), as modified by §19.45 (1), the Director should be in a position to demonstrate both: (a) that accepting 2004 Wis Eth Bd 01 Page 3 employment with the Foundation does not interfere with the full and faithful discharge of the Director's duties to the state and (b) that the Director is not using his or her state position to obtain a level of compensation that is greater than is commensurate with his or her duties for the Foundation. In order to do this, the following factors are important: 1. The Director's work for the Foundation should not take so much time as to interfere with the Director's responsibilities to the state agency. 2. The compensation that the Foundation pays the Director must be reasonable in light of the services that the Director renders to the Foundation. 3. The Director should not, in furtherance of his or her responsibilities to the Foundation, take an action antagonistic to the agency's interest or use the agency's resources, not normally available to anyone, to further an interest of the Foundation's that is not in furtherance of the interests of the state agency. The Director should be neither a member of the Foundation's board of directors nor have any responsibility for the supervision of the Foundation's director or staff unless and except as it is clear both to the agency and to the Foundation that the Director's role is to represent exclusively the interests of the agency. 4. The Director and Foundation should regularly document the work that the Director performs for the Foundation and spends on the Foundation's behalf. The Attorney General, in his letter dated November 9, 2000, stressed the importance of this action; we take this opportunity to concur and to add our own admonition to this effect.	Reaffirm
Representation of Clients	Eth. Bd. Op. 08-01	The Ethics Board advises: 1) A legislator may represent clients in criminal matters unless the Department of Justice, rather than a district attorney, is prosecuting the matter but the legislator should account for whether such representation will undermine citizen confidence in government; 2) A legislator may represent a client in a licensure or regulatory matter before a state agency only in an open hearing at which a record is maintained; and 3) Other lawyers in the legislator's firm whose work, judgment and compensation are not subject to the legislator's review may represent clients in matters before state agencies.	Revised - Staff will mark this as revised because of GAB annotations added in 2008 to modify the opinion.
Post-Employment			
Post Employment	Eth. Bd. Op. 96-16	The Ethics Code permits a former state public official to testify on behalf of a private party, for compensation, before an agency of another jurisdiction in a proceeding on issues in which the former official did not have personal and substantial involvement as a member of the governing body of a state agency. If a former official testifies in a proceeding in another jurisdiction on issues with respect to which the official was personally and substantially involved as a state public official in Wisconsin, the official should accept no compensation for such testimony unless the official can clearly and convincingly demonstrate that the official is being compensated solely for the official's testimony on other issues. The Ethics Code does not restrict a former official's attempting to influence legislation or administrative rules of state agencies other than the official's former agency if the official does not communicate with officers or employees of the official's former agency in connection with the official's lobbying efforts; and The Ethics Code does not restrict a former official's speaking to groups and individuals on matters that may have been before the official's former agency when the official held office, but the former official should not use or disclose information gained as a result of the official's holding office if the information has not been communicated to the public or is not public information. (November 20, 1996)	Reaffirm
Post Employment	Eth. Bd. Op. 97-17	The Ethics Board advises: That, for twelve months after a state public official leaves the official's state public office at a state agency, neither the official nor anyone working in concert with the official or under the official's direction, supervision, or control, should appear before or negotiate with an officer or employee of the agency acting in an official capacity. (October 24, 1997)	Reaffirm

Post Employment	Eth. Bd. Op. 98-13	The Ethics Board advises that: (1) Consistent with statutes administered by the Ethics Board, a public official may negotiate terms and conditions of employment with a new employer, even a lobbying principal, after the effective date of the official's resignation from the official's state agency even though the official is scheduled to continue to receive salary for accumulated vacation and sabbatical leave until a later date. (2) The revolving door provisions of §19.45(8)(a) prohibit a state public official's representing a private organization for compensation before either the agency or board with which the official was associated as a state public official prior to one year after the official's resignation.	Revise. Footnote referencing past Board's meeting minutes should be deleted.
Post Employment	Eth. Bd. Op. 03-12	The Ethics Board advises that §19.45 (8), Wisconsin Statutes, prohibits a former state public official appearing as a paid representative of a private entity before the agency to which the responsibilities of the official's former agency were transferred (1) until twelve months after the official has left office on matters that involve applications, contracts, claims, or other quasijudicial matters or proceedings under the official's responsibility while the official was with the official's former agency or (2) ever on applications, contracts, claims, or other quasi-judicial matters or proceedings in which the official participated personally and substantially as a public official. Apart from these restrictions, §19.45 (8) (a), Wisconsin Statutes, does not limit a former official's appearing as a paid representative of a private entity before the agency to which the responsibilities of the official's former agency were transferred.	Reaffirm
Post Employment	Eth. Bd. Op. 07-04	The Ethics Board advises that, because a former agency head did not participate in a proceeding, contract, claim, or charge involving the legality of a company's business practice, the Ethics Code does not restrict the former official's accepting compensation for preparing to testify about the agency's determination that the company's business practice did not violate Wisconsin law.	Reaffirm
Post Employment	Eth. Bd. Op. 07-13	The Ethics board advises: A former state official may not for compensation act on behalf of an organization other than the State of Wisconsin in connection with a federal agency's resolution of a matter in which the official personally and substantially participated in negotiations on behalf of the official's former agency to resolve the matter. This is so even if the official redirects the compensation or the compensation is paid directly to the official's employer or to any other individual or organization.	Reaffirm



Wisconsin Ethics Commission

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DATE: For the April 9, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Draft Formal Opinion 2019 ETH 01 – Service on Governing Boards

COMMISSION ACTION

- 1) Does the Commission approve the attached formal opinion as drafted?
- 2) Does the Commission approve the attached formal opinion with revisions consistent with today's discussion?
- 3) Does the Commission wish to take other action?

I. Background

At the Commission's March 2019 meeting, it directed staff to prepare a formal opinion based on an informal opinion issued in 2018 regarding the issue of a public official's ability to serve on governing boards of corporations.

II. Discussion

The primary purpose of publishing a formal advisory opinion is to make public the advice of the Commission on issues of first impression or on issues that are likely to recur in the future so that the entire regulated community can benefit from the advice provided to a single requestor. The question of whether public officials may serve on various governing boards has been asked multiple times by various requestors since the Commission was created in 2016, but to date no formal opinion of the Ethics Commission currently exists. Staff has anonymized the advice provided and redacted the records associated with the request and staff is prepared to publish the attached draft formal opinion and associated records upon the approval of the Commission.

III. Attachments

- A. Draft Formal Opinion 2019 ETH 01

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator
Daniel A. Carlton, Jr.

2019 ETH 01
ETHICS & LOBBYING – SERVICE ON A BOARD OF DIRECTORS

You are an agency official and state public official with the University of Wisconsin System. You have asked for an advisory opinion regarding your eligibility to serve on the boards of three separate organizations and, if permitted to serve, you have asked for any guidance the Commission could offer to avoid any potential ethical issues or conflicts of interest during your service on these boards.

Summary:

It is the opinion of the Commission that you may serve on the board of directors of these organizations.

Analysis:

As an official for the University of Wisconsin System, you are an agency official and state public official subject to the restrictions of the lobbying law and the code of ethics for public officials. This advice provides an overview of the general restrictions under the lobbying law and code of ethics for state officials that will apply to you and advises on steps to take to avoid any potential future conflicts of interest regarding these boards.

A. Lobbying Law Restrictions

The lobbying law provides one general restriction that would apply to you as a state public official: state public officials may not accept anything of value from a lobbyist or a lobbying principal. [WIS. STAT. § 13.625\(1\)\(b\)](#). One of the organizations you inquired about is a registered lobbying principal. In your request, you indicated that you would receive approximately \$7,000 annually for your service on this board of directors.

Ordinarily, such compensation would be prohibited because you are an agency official; however, Wisconsin law provides an explicit exception to the otherwise blanket prohibition for officers or employees of the University of Wisconsin System who are serving as members of the governing bodies of lobbying principals as long as the amount received is not in excess of that furnished to other members of the governing body for the same service. [WIS. STAT. § 13.625\(6s\)](#). Assuming that other members of the board of directors are similarly paid, this compensation is not a violation of the lobbying law.

B. Code of Ethics Restrictions

First, as a threshold matter, in some parts of the code of ethics, the restrictions are triggered not only by the interests of the official, but also those of his or her family, or organizations with which he or she is associated. “Associated” within the meaning of the code of ethics includes “any organization in which an individual or a member of his or her immediate family is a director, officer, trustee, or owns or controls, directly or indirectly, and severally or in aggregate, at least 10

percent of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.” [WIS. STAT. § 19.42\(2\)](#).

As a member of the board of directors you would be associated with two of the organizations described within the terms of the code of ethics. However, it is not clear from your description of the third board that your role with that board rises to the level of association under the code of ethics as this board has no decision-making authority. However, to avoid any appearance of impropriety, while serving on this advisory board you may wish to treat that organization similarly to how the law would require you to act for either of the other two organizations.

There are five statutory sections in the code of ethics that provide general restrictions on state public officials.

1. [WIS. STAT. § 19.45\(2\)](#) provides that a public official may not use their public position or office to obtain financial gain or anything of substantial value to benefit themselves, their family, or an organization with which they are associated. However, this restriction does not prohibit your service as a member of a board of directors and being compensated for your efforts as long as your invitation to serve was offered irrespective of your holding state office. [1992 Wis Eth Bd 18](#).
2. [WIS. STAT. § 19.45\(3\)](#) provides that an official should not accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence their official actions or judgment. This restriction is not meant to be a broad prohibition from outside employment. However, our predecessor agencies have advised that accepting compensation from an entity could reasonably be expected to influence an official’s actions on issues and matters of interest to the entity. [2004 Wis Eth Bd 06](#).

As such, you should seek to avoid specific conflicts of interest by not participating in discussion, deliberations, or votes that would relate to issues or matters that are specific to any of these entities. If there are discussions and votes that affect a broad issue or matter that merely relates to these entities and does not specifically affect only the entity’s interests, you may participate. Additionally, you may participate in discussions, deliberations, and votes regarding budgets and other larger projects that may only have small components which pertain to issues and matters that arise due to your membership on these boards. [2004 Wis. Eth. Bd. 06](#).

3. [WIS. STAT. § 19.45\(3m\)](#) provides that a state public official may not accept food, drink, transportation, lodging, or meals except as provided.

While you did not indicate receipt of any food or beverage in your opinion request, it is a common practice for organizations to provide food and beverages to their governing boards when they are present for a meeting. As indicated above, there are many exceptions to this particular prohibition, but most relevant to your service on these boards is most likely the exception of [WIS. STAT. § 19.56\(3\)\(b\)](#), which provides that an official may accept anything of value if the activity or occasion for which it is given is unrelated to the official’s use of state resources and the reason for which it is offered is unrelated to the recipient’s holding

or having held public office. In this matter, any food or drink you may be provided is likely offered due to your position on that board and not your public position and as such is it likely you may accept any such offers.

4. [WIS. STAT. § 19.45\(4\)](#) prohibits you from intentionally using or disclosing information gained in the course of your duties or by reason of your position in any way that could result in any value for yourself or any other person, if the information is not public.

You indicated in your request for advice that one of the organizations has a contractual relationship with the university and that the university is also seeking a philanthropic partnership with the organization. However, in neither case have you been personally or substantially involved. To ensure you do not violate this provision, you should be wary of discussing with any of your boards the confidential information you may have obtained by way of your public office that has not yet been made public. You should also be careful to avoid taking or prompting any action based on your confidential knowledge that would benefit these entities.

5. Finally, [WIS. STAT. § 19.45\(5\)](#) requires that no state public official may use or attempt to use the public position held by the official to influence or gain unlawful benefits, advantages, or privileges personally or for others.

As indicated above, where an organization has a contractual relationship with the university, you have followed State of Wisconsin purchasing procedures and have not been involved directly or indirectly in this contract. While this provision does not require association, you are well-advised to continue to ensure that proper procedures are diligently followed when the university may have dealings with the organization or any other entity with which you are associated.

Potential Future Conflicts of Interest

During your tenure as a state public official, conflicts of interest may arise if any of the entities you are associated with have matters that may come before you as an official. [WIS. STAT. § 19.46\(1\)](#) prohibits state public officials from engaging in official action that would provide substantial benefit to or substantially affect an interest of themselves, their family, or organizations that they are associated with. *See* [2006 Wis. Eth Bd 03](#). Accordingly, you should refrain from taking an official action that would substantially benefit or substantially affect an organization with which you would be associated by serving on its board of directors. Again, while not legally required, to avoid the appearance of impropriety you may also wish to treat the third organization similarly. As discussed above regarding [WIS. STAT. § 19.45\(3\)](#), there may be situations in which these organizations are interested where you may still act. You may take an action if it would affect a whole class of similarly-situated interests, the interests of the organization with which you are associated are not significant when compared to all affected interests in the class, and the action's effect on the interests of the organization with which you are associated are not significantly more or less impacted than the rest of the class.

In situations where you believe you may be conflicted from taking official action due to your membership on these boards, you should not participate in any discussion, deliberations, or votes related to the matter and should make a record of your withdrawal from participation. You may also contact us to request a further advisory opinion specific to that matter with a proposed course of action for the Commission to consider. For more information on how to mitigate potential conflicts of interest, see our [Guideline 1240](#).

June 14, 2018

Wisconsin Ethics Commission
P.O. Box 7125
Madison, WI 53707-7125

Dear Wisconsin Ethics Commission,

I would like to request a confidential opinion as a state public official subject to Chapter 19, Wis. Stats., as to my membership on three corporate boards in my local area to assure they do not present potential conflicts of interest with my [REDACTED] at the University of Wisconsin [REDACTED]. Also, could you advise me about the steps I could take to avoid any potential conflicts of interest or appearances of conflicts of interest regarding my participation on these boards? Below is description of the boards on which I sit and a description of my relationship to them:

[REDACTED] Board of Directors. [REDACTED] I have served as a member on this fiduciary board of directors since November 2012. For approximately the past two years, I have also served on and chaired the audit and compliance committee of this non-profit organization. I attend four board meetings a year and approximately four committee meetings per year, which I take as vacation time from my role as [REDACTED]. I receive \$7,000 annually for my service on the [REDACTED] Board of Directors.

[REDACTED] has a contractual relationship with the university. Under the current agreement, [REDACTED] provides annual sponsorships to the university's [REDACTED]. The yearly amounts range from [REDACTED] to assist the university in staffing and facility support for our [REDACTED] program, as well as [REDACTED] annually for [REDACTED]. The [REDACTED] provides [REDACTED] to the university for [REDACTED]; an [REDACTED], [REDACTED]; and [REDACTED].

This contract was awarded following State of Wisconsin purchasing procedures. A Request for Proposals was issued as outlined in Pro-C-1 (Competitive Bidding Policy) and Pro-C-5 (Bidding Policy and procedure, Official Sealed Bid). The request was posted on VendorNet and disbursed to [REDACTED] bidders. [REDACTED] vendors responded, and their responses were evaluated using a point system by an Evaluation Committee. The committee was established in accordance with Pro-C-29 (Evaluation Committee). The resulting contract is a [REDACTED]-year agreement with the option to renew for [REDACTED] additional [REDACTED] periods.

In my role as [REDACTED], I was not involved, directly or indirectly, in exercising any discretionary decision authority as [REDACTED] involving this contract, or any negotiations, awards, promotions, or other activities that substantially and/or financially benefit [REDACTED].

Further, during the time that I have served on this board, the university has been pursuing a philanthropic partnership with [REDACTED]. Discussions have been ongoing for the better part of [REDACTED], but as of this writing no definitive agreements have been reached. What is taking shape is an arrangement in which [REDACTED] will support efforts by the university to produce more graduates trained in [REDACTED] that

can bolster the regional work force thus playing an important role in workforce development for our region. We anticipate that [REDACTED]'s financial support will be in the form of annual gifts from their foundation to the university to equip more students with professional skills that would be useful to all [REDACTED] in the region. Should the final details be worked out, the agreement would manifest between the administrative staff at [REDACTED] and the university's dean of [REDACTED] (working in concert with [REDACTED] and the UW [REDACTED] Foundation). In other words, the [REDACTED] board on which I serve is not involved in decisions of this kind. Moreover, while I have been involved in some of the discussions with [REDACTED] staff over the past year and a half in my role as [REDACTED], I have stayed largely out of these conversations, deferring to our dean of [REDACTED] to represent the university and advance these negotiations.

Additionally, the [REDACTED] Compliance Office annually surveys all directors to identify any potential conflicts of interest (see [REDACTED] Conflict of Interest Disclosure form attached). These forms are reviewed by their compliance officer who refers to the audit and compliance committee any situations that may require a management plan and her recommendation regarding such a plan. I always disclose the university's business relationship with [REDACTED] and each year the committee has concluded that no management plan is needed. Of course, I recuse myself from this discussion and decision. The university's business relationship with [REDACTED] has never been a topic of discussion at a board meeting and the board was not involved in deciding to enter into this relationship with the university. This was a [REDACTED] management decision. Should, in the future, any business relationship with the university become a topic for board consideration, I would recuse myself from the discussion and any vote that might be taken.

[REDACTED] Board of Directors. [REDACTED] I have served as a board member on this fiduciary board of directors since July 25, 2011. I also serve on and chair the board's governance committee. I attend four board meetings and approximately two committee meetings a year, which I take as vacation time from my role as [REDACTED]. I receive approximately \$13,200 annually for my service on this board.

[REDACTED] has a minor business relationship with the university. [REDACTED] is a student organization at the university operating under the auspices of the [REDACTED] publishes one book per year. [REDACTED] printed [REDACTED] copies of [REDACTED] for [REDACTED], donating half the cost for printing the first 1,000 copies. This in-kind contribution by [REDACTED] did not come before the board of directors.

In my role as [REDACTED], I am not involved directly or indirectly in exercising any discretionary decision authority involving any contracts, negotiations, awards, promotions or other activities that substantially or financially benefit [REDACTED].

[REDACTED] Advisory Board. [REDACTED] I have served as an advisory board member on this non-fiduciary board since April 26, 2012. I attend four meetings a year, which I take as vacation time from my role as [REDACTED]. I receive \$3,200 annually for my service on this board. The board has no decision-making authority and [REDACTED] does not have a business relationship with the university.

Thank you for your assessment and advice regarding my service on these boards.

Sincerely,

[REDACTED]

Conflict Of Interest Disclosure

The purpose of this Disclosure Form is to disclose conflicts or potential conflicts with respect to [REDACTED] and/or an Affiliated Organization of [REDACTED]

The term "Affiliated Organization" includes:

- [REDACTED]

This Disclosure Form requires you to provide information not only with respect to you but also with respect to certain persons related to you. These persons are termed "Related Persons" and include the following:

1. Your spouse, children (and their spouses), step-children, parents, siblings (and their spouses), step-brothers, step-sisters, grandchildren and great grandchildren (and their spouses), grandparents, and great-grandparents.
2. Any corporation or organization (other than [REDACTED] or an Affiliated Organization) in which you are a board member, an officer, a trustee, a member, or a partner.
3. Any corporation or organization in which you participate in management (other than [REDACTED] or an Affiliated Organization).
4. Any corporation or organization in which you are employed (other than [REDACTED] or an Affiliated Organization).
5. Any publicly traded company in which you are a debt holder or have an ownership interest that exceeds \$50,000 in value as determined through reference to public prices or other reasonable measures of fair market value.*
6. Any publicly traded company in which you own more than 50% of the ownership of any single entity.*
7. Any privately held entity (an entity which is not publicly traded) in which you are the holder of any debt or any ownership interest, regardless of the value.
8. Any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.
9. Any corporation or organization in which you hold intellectual property rights (e.g. patents, copyrights, and royalties from such rights).

*Not including any interests in pooled funds (e.g. diversified mutual funds, 401(k) or retirement plans, etc.) managed by an independent fiduciary.

Please answer the following questions to the best of your ability, sign, and date.

We understand that you may not know what interests your family members hold. Please disclose to the best of your knowledge.

1. Name:

2. Capacity you serve [REDACTED] or any Affiliated Organization

(e.g. Board Member, Administrator)

3. Have you or any of your Related Persons PROVIDED services or property to [REDACTED] [REDACTED] or an Affiliated Organization in the past year or plan to provide services or property to [REDACTED] or an Affiliated Organization during the upcoming year (**excluding those provided in your capacity as you answered in Question 2**)?

Yes No

If yes, please describe the nature of the services or property and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

Please list any family members employed by [REDACTED] or Affiliated Organization:

4. Have you or any of your Related Persons PURCHASED services or property from [REDACTED] or an Affiliated Organization in the past year or plan to purchase services or property from [REDACTED] or an Affiliated Organization during the upcoming year (excluding services received as a [REDACTED])?

Yes No

If yes, please describe the purchased services or property and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

5. Please indicate whether you or any of your Related Persons had any direct or indirect interest in any business transaction(s) in the past year in which [REDACTED] or an Affiliated Organization was or is a party or plan to have any direct or indirect interest in any business transactions to which [REDACTED] or an Affiliated Organization will be a party during the upcoming year?

Yes No

If yes, please describe the transactions and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

6. Were you or any of your Related Persons indebted to pay money to [REDACTED] or an Affiliated Organization at any time in the past year (excluding business travel advances or the like; and excluding indebtedness in the capacity as a [REDACTED])?

Yes No

If yes, please describe the indebtedness and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

7. In the past year, did you or any of your Related Persons receive or become entitled to receive, directly or indirectly, any personal benefits from [REDACTED] or an Affiliated Organization that in the aggregate could be valued in excess of \$1,000, that were not or will not be compensated directly related to your duties to [REDACTED] or an Affiliated Organization?

Yes No

If yes, please describe the benefit(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

8. Are you or any of your Related Persons a party to or have an interest in any pending legal proceeding involving [REDACTED] or an Affiliated Organization (other than any [REDACTED] actions insured under [REDACTED]'s self-insurance plan)?

Yes No

If yes, please describe the proceeding(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

9. Are you aware of any other events, transactions, arrangements, or other situations that have occurred or may occur in the future that you believe should be examined by [REDACTED] or an Affiliated Organization? This includes any conflicts of loyalty where you as an Interested Person owe duties to another body or organization which conflict, or which may appear to conflict, with your responsibilities to act in the best interest of [REDACTED] or Affiliate Organization as a member of a [REDACTED] board, for example.

Yes No

If yes, please describe the events, transactions, arrangements, situations, or proceeding(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

I HEREBY CONFIRM that my responses to the above questions are complete and correct to the best of my information and belief. **(Note: By answering "YES" to this question, you are affirming that your responses are complete and correct.)**

Yes No

Signature

Date

FOR [REDACTED] BOARD MEMBERS ONLY:

BUSINESS RELATIONSHIPS AND FAMILY RELATIONSHIPS AMONG DIRECTORS

Because you are a member of the Board of Directors of [REDACTED], please answer on the following pages if you have a family relationship or business relationship with any other director.

Family Relationship means the individual is any of the following: your spouse, your brother, your sister, a spouse of your brother or sister, your ancestor, your child, your grandchild, your great grandchild, a spouse of your child, a spouse of your grandchild, or a spouse of your great grandchild.

A "Business Relationship" is defined as any of the following:

- One person is employed by the other in a sole proprietorship.
- One person is employed by an organization in which the other is associated as a trustee, director, officer, key employee, or greater than 35% owner.
- One person is transacting business with the other (other than in the ordinary course of business of either party's business on the same terms as are generally offered to the public) directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization's tax year. Indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater than 35% owner.
- The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity. ♣

"Ownership" is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (for example, ownership in an entity that has ownership in the entity in question). There may be ownership through multiple ties of entities.

**Privileged relationships (e.g., doctor/patient, attorney/client, clergy/penitent) do not need to be disclosed.

Please check the box(es) as appropriate if you have a family relationship or business relationship with any of the following individuals who are also serving on the Board of Directors of

[REDACTED]

[REDACTED]

- Business Relationship
- Family Relationship

[Redacted]
[Redacted]

- Business Relationship
- Family Relationship

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[Redacted]

- Business Relationship
- Family Relationship



Wisconsin Ethics Commission

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(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the April 9, 2019, Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: Adoption of Additional Legislative Recommendations

FOR COMMISSION ACTION

For each recommendation, the Commission may:

1. Adopt the additional legislative recommendation;
2. Adopt a modified version of the legislative recommendation; or
3. Not adopt the additional legislative recommendation.

When the Commission adopted its 2018 Annual Report, that report contained 31 Recommendations for Potential Legislation. Pursuant to the Commission's instructions at the meeting on December 11, 2018, staff has worked to advocate for the adoption of those recommendations by the Legislature. When I have met with Legislators, I have made sure to take the time to discuss as many of the recommendations that the Commission made in its 2018 Annual Report as time would allow. Additionally, I have exercised the agency's bill drafting privileges with the LRB. This has been a collaborative process amongst staff and with our partners in the LRB. A draft bill is ready; and the focus now shifts towards getting a bill passed containing as many of those recommendations as possible. In the time since the Commission adopted the Annual Report, two issues have arisen that the Commission may wish to include in its Legislative Recommendations. Since there are still ample opportunities to amend and incorporate our recommendations and any bill that may come from them, staff has decided to ask the Commission whether it would like to consider adopting two recommendations to address these issues.

First, the Commission could consider whether to recommend codification of the disposition of gifts provisions contained in Guideline 1235. That Guideline contains the following recommendations for disposition of gifts:

- Turn the item over to the agency, if the item is one the agency can use or sell;
- Turn the item over to another state agency or to a public institution, such as a local school, library, or museum that can use the item;
- Donate the item to a charitable organization (other than one with which the official or a family member is an officer, director, or agent).
- Return the item to the donor; or

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

- If the donor is neither a lobbyist nor an organization that employs a lobbyist, purchase the item (by paying the donor the full retail value), and retain it.

The reason staff is bringing this item to the Commission's attention for consideration is because this question comes up frequently and that Guideline is often referenced. There may be some appetite to codify precedent such as this that is well settled and frequently relied upon.¹

Second, the Commission could consider whether to recommend that the Legislature create an exception in the lobbying law that would allow officials to purchase tickets to an event put on by a lobbyist or principal, or purchase food and beverages at an event put on by a lobbyist or principal, if the official pays the greater of the actual cost of the food or the cost of admission charged to non-officials attending to enter the event. While the Commission likely has authority to address this issue through its rulemaking authority, this is probably best left for the Legislature to decide, because this issue is such a significant policy call. This would essentially be a codification of the practice that has been in place for more than 20 years.

¹ The only statutory basis for disposition of items is in [WIS. STAT. § 19.56\(4\)](#), but it is limited to items received for a published work, talk or meeting. This would need to be expanded to codify the Guideline. [WIS. STAT. § 19.56\(4\)](#), provides:

If a state public official receives a payment not authorized by this subchapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the department or municipality with which he or she is associated or, in the case of a justice or judge of a court of record, with the director of state courts. If that is not practicable, the official shall return it or its equivalent to the payor or convey it to the state or to a charitable organization other than one with which he or she is associated.



Wisconsin Ethics Commission

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DATE: For the April 9, 2019, Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: Administrator Performance Evaluation Process

FOR COMMISSION ACTION

For the Administrator Performance Review Process, the Commission may:

1. Adopt the process described below;
2. Adopt a modified version of the process below; or
3. Take no action.

At the Commission's meeting on December 11, 2018, the Commission directed me to prepare and present a plan for conducting a performance evaluation for the Commission Administrator. At that time, the members contemplated an initial performance review around my one-year anniversary with the Commission. Based upon that direction, I have reviewed the process used for conducting the performance review of the prior Commission Administrator. I have also considered the performance review process used for the Commission's other staff. The following discusses an approach that can be taken in reviewing the performance of the Commission's Administrator.

While it is an appropriate and important part of employment to have regular performance evaluations done, a person occupying the position of the Commission's Administrator is not required to have a performance evaluation conducted by statute or rule. As a result, the Commission has substantial flexibility in how it can conduct a performance evaluation of its Administrator. There are no required formats or templates for creation of such a process. The only requirement, which is typical in performance evaluations, is that performance evaluations be done confidentially. In considering how the Commission should conduct a performance review of its Administrator, the Commission should consider what information the Commission would like to have on which it would base its evaluation, what methodology the Commission would like to employ in conducting the performance evaluation, and how it would deliver the results of the performance evaluation.

Information Necessary to Conduct the Performance Review

There are several categories of information that the Commission may wish to use to conduct a performance evaluation of the Commission's Administrator. First, the Commission will want to consider the duties assigned to the Commission's Administrator. Those duties are derived in the following manner:

- Statutory duties of the Administrator;
- Duties required by administrative rule; and
- Other duties as assigned by the Commission.

There is a current position description that covers the duties of the Commission's Administrator. It was reviewed prior to hiring the Commission's current Administrator. When any performance evaluation is done concerning a public employee in Wisconsin, the position description is the first step in the entire process. It must be current and accurate. The entire performance evaluation is then crafted around the duties assigned in the position description.

Second, the Commission will want to consider any information it can obtain concerning how the Administrator performed his or her job duties. In this context, the Commission will want to consider feedback from staff. Indeed, that type of feedback was used by the Commission when it conducted a performance review of the prior Administrator. In soliciting feedback from staff, it is absolutely critical for the staff to have anonymity when providing feedback. This will allow the staff members to provide complete and candid feedback.

Third, the Commission will want to consider feedback from the Administrator. This type of self-evaluation is important to the process, it gives the person a chance to compare their duties as described in the position description with what they actually do. It also provides the person a chance to objectively look at how well they are performing the tasks assigned and come up with ways to improve performance in the future. This information can come in two ways: First, the Administrator could prepare a letter explaining what has occurred during the review period and discuss highlights and opportunities for improvement. This approach is the one that the Commission used with the prior Administrator. Alternatively, many supervisors within government provide the staff member a blank template for conducting his or her performance evaluation. Then, the staff member completes the evaluation form and discusses it with their Supervisor. Finally, the Supervisor provides feedback and completes the scoring of the employee. This is the process that the Administrator currently uses with Commission staff.

Methodology

While there is not a document similar to this memo that I am aware of, the following methodology appears to be consistent with what was used in reviewing the performance of the prior Administrator. First, the prior Administrator drafted a letter to the Commissioners. It consisted of a discussion of accomplishments, projects in progress, and potential future priorities. The letter was included in the Closed Session portion of the meeting materials. The letter also had documents attached. Those documents included the Administrator's Position Description and Feedback from the Commission's Staff Members. The feedback appears to have been given anonymously to a staff member who compiled it for the Commission's consideration. There was no scoring other than the Commission's unanimous vote that the Administrator exceeded expectations. The Administrator was advised verbally of the results of the performance review.

The approach that was used with the prior Administrator seems to have been an effective way for the Commission to conduct the performance evaluation. In keeping with the way that the Commission

conducted the prior performance evaluation of the Administrator, the Commission should consider using a similar approach going forward. So, the approach would be as follows:

- 1) The Administrator will prepare a letter discussing accomplishments, projects in progress, and potential future priorities;
- 2) Attached to the letter will be the Administrator's position description;
- 3) Commission staff will have the opportunity to provide Commissioners feedback concerning the Administrator; and
- 4) The Administrator will present the materials to the Commission in Closed Session and the Commission will provide verbal and/or written feedback.

Concerning the staff's feedback, the Commission may want to have feedback submitted in the fashion that it was for the prior Administrator. Alternatively, the Commission may want to solicit direct written or verbal feedback from the staff. Whichever approach is taken, it should ensure that staff have complete anonymity. This will encourage candid, constructive feedback.

Because of the flexibility the Commission has in conducting a performance review of the Administrator, the Commission should adopt some method of grading the performance. In the performance review of the prior Commission Administrator, the grading appears to have been on a simple "exceeds expectations," "meets expectations," or "does not meet expectations" basis. Due to the nature of the Administrator's position, it appears that this is the best way to rate the performance of the Administrator.

Conclusion

The foregoing is a brief discussion of considerations involved in creating a performance evaluation for the Commission's Administrator and a proposed methodology for that review. Based on the discussion today, the Commission should adopt a performance review process for the Commission's Administrator. Once the process is decided upon, the Commission can direct staff to keep a record of the process going forward for future reviews of the Administrator.



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DATE: For the April 9, 2019, Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: Commission Meeting Dates for Calendar Year 2020

FOR COMMISSION ACTION

The Commission may:

1. Adopt the schedule discussed herein; or
2. Adopt a different schedule in accordance with today's discussion.

At the Commission meeting on March 5, 2019, the Commission requested that staff prepare a proposed meeting schedule for 2020. Staff examined known election dates, filing deadlines, and other important dates for that year. Staff then examined possible meeting dates, potential conflicts, and other concerns with those dates. After considering the information available, staff proposes the following meeting dates for the year 2020:

Commission Meeting Date	Materials Deadline ¹
March 3, 2020	February 18, 2020
June 16, 2020	June 2, 2020
August 18, 2020	August 4, 2020
October 13, 2020	September 29, 2020
December 15, 2020	December 1, 2020

Additionally, the Commission's Biennial Budget Request will be due by September 15, 2020. While staff hopes to have the request ready for adoption at the August 2020 meeting, there may be a need to have a teleconference between the August meeting date and the deadline. Staff is recommending that the Commission set aside Thursday, September 10, 2020, in case a teleconference is needed to approve the Commission's Biennial Budget Request.

Attachment: 2020 Important Dates Calendar

¹ While there is no statutory requirement to provide materials to the Commissioners by a particular time, staff practice has been to send meeting materials to the Commission members approximately two weeks prior to the next meeting. These dates are subject to change and are provided for reference only. If an alternate meeting date is suggested, it is important to also consider any events occurring two weeks prior to the alternate date.

Calendar for Year 2020 (United States)



January

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

March

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Jan 15	CF - January	Apr 30	SEI - annual filers	Jul 31	SLAE - 3rd Quarter	Aug 27	Republican National Conv. - Charlotte
Jan 20	MLK	May 25	Memorial Day	Aug 3	CF - Pre-Primary Fall	Sep 7	Labor Day
Jan 31	SLAE - 2nd Quarter	Jun 4	SEI - fall deadline	Aug 11	Fall Primary/Election	Sep 22	Sept. Report
Feb 10	CF - Pre-Primary	Jul 13	Democratic National Conv. - Milwaukee	Aug 24	Republican National Convention - Charlotte	Oct 26	CF- Pre-Election Fall
Feb 18	Election Dates	Jul 14	Democratic National Conv. - Milwaukee	Aug 25	Republican National Convention - Charlotte	Nov 3	Fall Election
Mar 30	CF - Pre-Election	Jul 15	CF - July	Aug 26	Republican National Conv. - Charlotte	Nov 26	Thanksgiving
Apr 7	Election Dates	Jul 15	Democratic National Conv. - Milwaukee				
Apr 12	Easter	Jul 16	Democratic National Conv. - Milwaukee				



Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the April 9, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rule Update

FOR COMMISSION ACTION

1. For ETH 1 – Act 117 Amendments/Attribution, does the Commission direct staff to submit the draft rule and associated documents to the Legislative Council’s Rules Clearinghouse and schedule a public hearing on this rule for the Commission’s June 18, 2019 meeting?

I. Chapter ETH 1 – Act 117 Amendments/Attribution

This draft rule would amend WIS. ADMIN. CODE ETH [1.20\(9\)](#), [1.26\(2\)](#), [1.26\(6\)](#), [1.60\(1\)\(b\)](#), [1.70\(1\)](#), and [1.855\(2\)](#) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of [WIS. STAT. § 11.1303](#).

The Commission initially approved the scope statement for this rule on August 21, 2018. Staff submitted the scope statement to the Department of Administration and received approval from the Governor to continue with rulemaking on November 15, 2018. The scope statement was submitted to the Legislative Reference Bureau for publication in the Administrative Register on November 15, 2018. The scope statement was published in Register No. 755A3 on November 19, 2018. On December 11, 2018, the Commission formally approved the scope statement and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Staff has submitted the draft rule to LRB for pre-submission editing and staff has incorporated their comments in the latest version of the rule (see attached).

If the attached documents are approved, staff is prepared to submit them to the Legislative Council Rules Clearinghouse as the next step in the promulgation process. A public hearing on the draft rule would then be set for the June meeting where the Commission could then consider any public comments as well as the Legislative Council report.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

II. Chapter ETH 16 – Lobbying

This rule was referred to the Legislature for consideration on June 18, 2018, but as that was after the Legislature’s final general-business floor period, the rule was held over to the new session. The rule was referred to the Senate Committee on Elections, Ethics and Rural Issues on January 16, 2019. The rule was also referred to the Assembly Committee on Constitution and Ethics on January 22, 2019. The Senate committee referred the rule without objection to the Joint Committee on Review of Administrative Rules (JCRAR) on February 19, 2019. The Assembly committee referred the rule without objection to JCRAR on February 27, 2019. JCRAR has 30 days to review the rule, but that period may also be extended by another 30 days by requesting the agency meet with the committee or posting a notice that the committee will hold a meeting or hearing to review the rule and sends notice to the agency.

As of the time of drafting this memo, staff has received no request for a meeting or notice of a meeting or hearing from JCRAR.

III. Chapter ETH 1 – 2015 Act 117 Repeals

This final draft rule was approved by the Governor on March 26, 2019. As of the drafting of this memo staff is preparing to send the rule over to the Legislature for its consideration.

IV. Attachments

- A. ETH 1 – Act 117 Amendments/Attribution
 - 1. Proposed Rulemaking Order
 - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
 - 3. Notice of Hearing
 - 4. Fiscal Estimate and Economic Impact Analysis

SS# 116-18, Wisconsin Administrative Register No. 755A3, 11/19/2018

WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes a rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats., related to campaign finance.

RULE SUMMARY

- A. **Statutes interpreted:** Chapter 11, Stats.
- B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate rules to administer Chapter 11 pursuant to s. 11.1304 (17), Stats.

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

The Commission also has specific authority to specific small items or other communications to which s. 11.1303 (2), Stats., does not apply pursuant to s. 11.1303 (2) (f), Stats.

11.1303 Attribution of political contributions, disbursements and communications.
(2)

...

(f) This subsection does not apply to communications containing express advocacy printed on small items on which the information required by this subsection cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones. The commission may, by rule, specify small items or other communications to which this subsection shall not apply.

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

s. 19.48(1), Stats.:

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.

s. 227.11(2)(a), Stats.:

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.

Explanation of agency authority: The Ethics Commission is required to promulgate rules to administer Chapter 11, Stats. The Wisconsin Ethics Commission is also authorized by s. 11.1303 (2) (f), Stats. to specify small items or other communications to which the attribution requirement shall not apply.

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 as required by 2015 Wisconsin Act 117. In that review, the Board noted several provisions that were inconsistent with the new law, but it did not address other statutory and administrative references within ETH 1 that needed to be updated to harmonize the language with the newly created Chapter 11 or current administrative procedures before it was dissolved. This proposed rule would update provisions that currently contain references to the prior version of Chapter 11 as well as references to outdated forms of the Government Accountability Board. The Ethics Commission previously sought to repeal the inconsistent provisions in CR 18-047, which is currently pending approval of the Governor, and now seeks to amend the remaining provisions affected by 2015 Act 117.

C. **Related statute(s) or rule(s):** CR 18-047.

D. **Plain language analysis:** The rule amends several provisions of ETH 1 to eliminate references to outdated forms and statutory provisions that were repealed under the new campaign finance law created by 2015 Act 117.

The Commission currently only advises committees as to the language required to comply with s. 11.1303 (2), Stats. However, the Commission regularly receives inquiries regarding the necessity of attributions on certain communications or on items where an attribution cannot be conveniently printed. The Commission also regularly receives inquiries as to the required size of an attribution statement. Wisconsin law currently requires that an attribution statement be “readable, legible, and readily accessible.” This rule will propose standards to better define when an attribution is readable, legible, and readily accessible; as well an exception for certain small items or other communications as allowed by s. 11.1303 (2) (f), Stats.

E. **Summary of, and comparison with, existing or proposed federal regulations:**

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by

one or more candidates (e.g., “Paid for by the Sheridan for Congress Committee.”) Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

F. Comparison with similar rules in adjacent states:

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required

to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan’s elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a “paid for by” attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate’s committee, or ballot issue committee.

Iowa’s attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the

attribution on a single page. For a website, the attribution need only appear on the home page of the site.

G. Summary of factual data and analytical methodologies: N/A

H. Analysis and supporting documentation used to determine effect on small businesses:
N/A

I. Effect on small business: N/A

J. Agency contact person:

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951

K. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 17, 2019. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

See attached.

TEXT OF RULE

SECTION 1. ETH 1.20 (9) is amended to read:

ETH 1.20 (9) Any registrant who makes or receives an in-kind contribution shall report the contribution on ~~Schedule 3-C~~ of its campaign finance report.

SECTION 2. ETH 1.26 (2) is amended to read:

ETH 1.26 (2) The return of a contribution is not a disbursement ~~subject to the limitations on disbursements in s. 11.31, Stats.,~~ and it is not a contribution subject to the limitations on contributions in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

SECTION 3. ETH 1.26 (6) is amended to read:

ETH 1.26 (6) A registrant who receives a return of contribution shall report it on the campaign finance report, ~~Form EB-2,~~ on Schedule 1-C, OTHER INCOME, and shall designate this as “return of contribution.”

SECTION 4. ETH 1.60 (1) (b) is amended to read:

ETH 1.60 (1) (b) An authorized expenditure for consulting services made by a candidate, candidate's committee, political action committee, or political party committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, ~~except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., and spending limits under s. 11.31 (2), Stats.,~~ except as provided in par. (c).

SECTION 5. ETH 1.70 (1) is amended to read:

ETH 1.70 (1) A candidate for or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her personal campaign committee ~~subject to the applicable spending limits of s. 11.31 (2), Stats., and s. ETH 1.44~~ and is deemed to provide nonreportable volunteer services to the candidate in the other district.

SECTION 6. ETH 1.855 (2) is amended to read:

ETH 1.855 (2) A contribution from a conduit account shall be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate's personal campaign committee, or to a legislative campaign committee, political party committee, or ~~support~~

~~committee under s. 11.18, Stats~~ political action committee. A conduit may not make an in-kind contribution as defined in s. ETH 1.20 (1) (e).

SECTION 7. ETH 1.96 is created to read:

ETH 1.96 Attribution requirements.

- (1) DEFINITIONS. In this section:
 - (a) “Readable” means able to be read easily.
 - (b) “Legible” means each individual letter or character is clearly printed so it can be easily understood.
 - (c) “Readily accessible” means capable of being seen without much difficulty.
- (2) SPECIFICATIONS FOR ALL ATTRIBUTIONS. All attributions required by s. 11.1303, Stats., shall be readable, legible, and readily accessible.
- (3) MATERIAL THAT DOES NOT NEED AN ATTRIBUTION. Communications that are contained in or on any the following do not require attributions under s. 11.1303, Stats.:
 - (a) Bumper stickers.
 - (b) Business cards.
 - (c) Buttons.
 - (d) Clothing.
 - (e) Online ads and similar electronic communications where the language required could not conveniently be printed, and that link directly to a website that includes the language required by s. 11.1303, Stats.
 - (f) Pencils.
 - (g) Pens.
 - (h) Pins.
 - (i) Skywriting.
 - (j) Tickets.

SECTION 8. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

**Notice of Submittal of Proposed Rule to
Legislative Council Rules Clearinghouse**

On April 9, 2019, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule amends parts of Chapter ETH 1 to reflect the changes made by the new campaign finance law created by 2015 Act 117. The proposed rule also creates a new provision that would clarify the attribution requirements of s. 11.1303, Stats.

Statement of Scope

The scope statement for this rule, SS 116-18, was approved by the Governor on November 15, 2018, published in Register No. 755A3, on November 19, 2018, and approved by the Ethics Commission on December 11, 2018.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 18, 2019.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Ethics Commission

Agency Contact Person

David P. Buerger
P.O. Box 7125, Madison, WI 53707-7125
David.Buerger@wisconsin.gov
(608) 267-0951

Notice of Hearing

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create WIS. ADMIN. CODE ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.; at the time and place shown below.

Hearing Information

Date: June 18, 2019

Time: 9:00 A.M.

Location: 101 East Wilson Street, Wisconsin Room, Madison, WI 53703

Appearances at the Hearing and Submittal of Written Comments

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to eth.rulecomments@wi.gov. Written comments must be received no later than June 17, 2019 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

 Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

3. Subject

Amend Wis. Admin. Code ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.

4. Fund Sources Affected

 GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

6. Fiscal Effect of Implementing the Rule

 No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

 State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

 Yes No

9. Policy Problem Addressed by the Rule

2015 Wisconsin Act 117 removed certain provisions of campaign finance law that are referenced in parts of WIS. ADMIN. CODE ETH 1. This rule will remove references to outdated forms and statutory provisions as well as create a provision clarifying the attribution requirements of s. 11.1303, Stats. The Commission also may exempt certain items and other communications to which s. 11.1303 (2) may not apply.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would remove outdated portions of Chapter ETH 1 and provide clarity as to the requirements for attributions for the regulated community. The alternative would be to not create such a rule, but instead continue to not enforce the outdated provisions and analyze attributions on a case-by-case basis. Such inaction could continue to promote confusion among the regulated community and may lead to inadequate attribution of political communications.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117 and would provide long-term certainty as to what is required to comply with s. 11.1303, Stats.

15. Compare With Approaches Being Used by Federal Government

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by one or more candidates (e.g., "Paid for by the Sheridan for Congress Committee.")

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the
McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan's elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a "paid for by" attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate's committee, or ballot issue committee.

Iowa's attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the attribution on a single page. For a website, the attribution need only appear on the home page of the site.

17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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DATE: For the April 9, 2019 Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Julie Nischik, Office Management Specialist
SUBJECT: New Records Disposition Authorization

FOR COMMISSION ACTION

The Commission may:

1. Approve the RDA as written; or
2. Direct staff to modify the RDA based on today's discussion.

Commission staff determined that, in order to maintain and store records related to Settlement Agreements, a new Records Disposition Authorization (RDA) needs to be created. An RDA is a schedule that determines how long a record should be kept, as well as what happens to the record at the end of that time period.

New RDAs must be submitted to the Public Records Board for review and approval. This process takes approximately 3 months. Commission staff plan to submit this new RDA to the Public Records Board by June 21, 2019, for review at the board meeting on August 26, 2019. The draft RDA is attached for review.

Enclosures: Draft RDA Settlement Agreements

Records Retention / Disposition Authorization

<ul style="list-style-type: none"> • Read instructions provided on pages 2-3 before completing. • In accordance with Wis. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record. • Agency Records Officer: Forward original to the PRB. Maintain an agency copy during the PRB review process. 	1. RDA # 7000	2. Record Series Title Settlement Agreements
	3. RDA Status (Check One): <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Renewal	
	4. Agency #: 521	5. Unit #: 52100
	6. Agency Name Ethics Commission	
Division Name		Subdivision Name

7. Record Series Year of Creation 2016	8. Medium for Records Storage (Check all appropriate) <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input checked="" type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)
---	---

9. Retention Time Period - Specify Actual Period	10. Event that Initiates the Start of the Retention Time Period (Check One)										
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-right: 1px dashed black; width: 10%;">Yrs</td> <td style="border-right: 1px dashed black; width: 10%;">Mo</td> <td style="border-right: 1px dashed black; width: 10%;">Wks</td> <td style="border-right: 1px dashed black; width: 10%;">Days</td> <td style="width: 10%;">Permanent*</td> </tr> <tr> <td style="border-right: 1px dashed black;">6</td> <td style="border-right: 1px dashed black;"></td> <td style="border-right: 1px dashed black;"></td> <td style="border-right: 1px dashed black;"></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Yrs	Mo	Wks	Days	Permanent*	6				<input type="checkbox"/>	Creation Fiscal Other (Specify) <input type="checkbox"/> (CR) <input type="checkbox"/> (FIS) <input checked="" type="checkbox"/> Event as defined below
Yrs	Mo	Wks	Days	Permanent*							
6				<input type="checkbox"/>							

*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.

11. Disposition (Check One): <input type="checkbox"/> Destroy <input type="checkbox"/> Destroy Confidential <input checked="" type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location (Specify):
--

12. Records Series Description

Series contains settlement agreements reached after a violation of Chapter 11 Campaign Finance, Chapter 13 Subchapter III Regulation of Lobbying, or Chapter 19 Subchapter III Code of Ethics, and signed by the individual or a representative of the organization, and the Administrator of the Ethics Commission. The series also contains settlement agreements that were issued, but not signed by either party, and either terminated by the Commission or referred for civil action.

Event = Date settlement agreement is signed by both parties, or the agreement is terminated by the Ethics Commission, or civil action is filed

Retention of records: 6 years, then transfer to WHS

Signed settlement agreements are open for public review per WIS. STAT. § 19.49(1)(b). Unsigned settlement agreements are confidential, per WIS. STAT. § 19.50, 19.55(3).

Reason for creation: These records were identified as unique to the agency, and not easily maintained using existing agency RDAs.

13. Records Contain Personally Identifiable Information (PII): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	--

15. Name of Agency <input type="checkbox"/> Program Contact or <input checked="" type="checkbox"/> Records Officer: Julie Nischik Telephone: (608) 261-2035 Email: JulieE.Nischik@wi.gov
--

16. Records Series Contains Content that is Confidential or Access is Protected: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.
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17. APPROVAL SIGNATURES

Agency Official	Date (mm/dd/ccyy)	Agency Records Officer	Date (mm/dd/ccyy)
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PUBLIC RECORDS BOARD APPROVAL – Authorization is contingent on restrictions to record destruction contained in Wis. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.

State Archivist	Date (mm/dd/ccyy)	Executive Secretary – PRB	Date (mm/dd/ccyy)
-----------------	-------------------	---------------------------	-------------------

Approval subject to 10-year sunset per Wis. Stat. § 16.61(4)(c). Action required before: _____

INSTRUCTIONS: Records Retention/Disposition Authorization

- 1. Retention/Disposition Authorization (RDA) #:**

Prior to submission to the Public Records Board (PRB) for approval, every RDA must have a unique, sequential number. Agency Records Officers assign this number which is subject to PRB approval.

 - The Records Officer must review past RDAs and then assign a number to new RDAs which has never been used.
 - A suffix is not used for most records series. It is an optional alphabetical character that may be added to the end of the RDA number when used to indicate different retention periods, media, or dispositions for all or portions of the same records series.
- 2. Records Series Title:** Assign a descriptive title to the records series. Be certain that agency employees will be able to accurately identify the records series from its title. Do not use abbreviations or acronyms.
- 3. RDA Status:** Check only one box:
 - **NEW:** Request for approval of an RDA with a number that has never been submitted to the PRB. In # 12, provide the reason for the creation of the RDA, for example: program re-organization, records identified during agency review, or brand new records being created.
 - **AMENDED:** Request for approval of a change to an RDA that previously was approved by the PRB. Any revision to an RDA triggers amended status. Use existing RDA number.
 - **RENEWAL:** The RDA has sunset and is being renewed without amendments. RDA's automatically sunset every 10 years, per Wis. Stat. § 16.61(4)(c). Use existing RDA number.
- 4. Agency #:** Use the following:
 - **State Agency:** Use the three-digit agency appropriation code assigned by Wis. Stat. § 20.005.
 - **University of Wisconsin:** Use the three-digit statutory code (285) together with the alphabetical code assigned to the institution.
 - **Local Units of Government, Other Entities:** Please contact PRB Staff.
 - **Board/Commission:** The Records Officer may assign an additional alphabetical character to autonomous entities that are attached to an agency.
- 5. Unit #:** Use the following:
 - Indicate the business unit # which has ownership and financial responsibility for records in this series if applicable.
 - **University of Wisconsin:** Use the 6-digit UDDS # that the UW uses for accounting and budgetary purposes.
- 6. Agency Name:**
 - Identify the entity that has legal custody of the records, using correct names. Do not use acronyms or abbreviations.
 - Identify the division and/or subdivision that creates and receives the records. Do not use acronyms or abbreviations.
- 7. Records Series Year of Creation:** This is the year the agency first began creating or receiving records in this series. If the precise year is unknown, then provide an estimate.
- 8. Medium for Records Storage:** Indicate all the media on which the records are stored such as paper, electronic/digital, microform, or other, e.g., audio, film, or video.
- 9. Retention Time Period:** SPECIFY AN ACTUAL TIME PERIOD. Enter the number of years, months, weeks, or check "Permanent" to indicate period of time for retaining the records. "Permanent" means that the records need to be maintained permanently by the creating agency. See the [Guidelines for the Permanent Retention of Records](#).
 - In # 12, provide specific justification to the PRB for the proposed retention time period. Examples of appropriate justification include, but are not limited to: citation of controlling statutes or administrative rules, consistency with related retention schedules, audit or fiscal requirements, or end of business need.
 - If a retention time period is required by law, cite the relevant statute, administrative rule, or other legal authority in #12.
- 10. Event:** Use this field to indicate the specific event that must occur in order to initiate the retention time period. Identify this event by checking one of the boxes listed:
 - **CR:** If creation of the record initiates the retention time period, mark the checkbox "CR."
 - **FIS:** If the retention time period is initiated by the end of a fiscal year, mark the checkbox "FIS." These records must be kept through the end of the Fiscal Year.
 - **Other (Specify):** If a specific event other than "CR" or "FIS" initiates the retention time period, mark the checkbox "Other (Specify)". You must also state the event. You may provide a detailed description of the event within the Records Series Description in #10 if more space is needed.
- 11. Disposition:** Check the appropriate box to indicate disposition of the records after the retention time period has expired. Only one disposition may be checked. Mark as "Destroy Confidential" if the record series contains personally identifiable information (PII, see # 13, below), or the record's access is restricted by law (see # 16, below). If a record series is marked as "Destroy Confidential," then the record destruction shall comply with all relevant legal requirements.
- 12. Records Series Description:**
 - The description is the most important section of the RDA. It informs the PRB, and others who are unfamiliar with the records series, what information is contained in the series, the business purpose for the information, and the reasons why the series was created and/or received by the agency.
 - May include relevant statutory, rule citations, or other legal authority in order to clarify the content of the records and the authorization to create them. Additional information may be included as needed for employees to manage the records, such as providing guidance regarding who is custodian of the records within the series or conditions that must be met prior to disposition, as well as the relationship to any other record series.
 - If requesting approval of a NEW RDA, provide the reason for the creation of the RDA, for example: program re-organization, records identified during agency review, or brand new records being created.
 - "Record series" is defined by Wis. Stat. § 16.61(2)(c).
- 13. Records Contain Personally Identifiable Information:** Wisconsin law requires authorities to specifically identify records series that contain personally identifiable information (PII). PII is defined in Wis. Stat. §19.62(5) as information that can be associated with a particular individual through one or more identifiers or other information or circumstances. Examples of PII include, but are not limited to, a person's name plus social security number or driver's license number. If the records associated with this RDA must be destroyed confidentially due to PII content, check yes. Check yes even if some, but not all, of the records included in the RDA contain PII. If YES, complete #12. If NO, do not complete #14.

14. Personally Identifiable Registry:

Pursuant to Wis. Stat. § 16.61(3)(u), the Public Records Board shall create a registry describing records that contain PII. The law specifies that records containing the following information shall not be included in the Registry:

- a. Any records series that contains the results of a matching program, as defined in Wis. Stat. § 19.62(3), if the state agency using the records series destroys the records series within one year after the records series was created;
- b. Mailing lists;
- c. Telephone directories;
- d. Records series pertaining exclusively to employees of a state agency;
- e. Records series specified by the board that contain personally identifiable information incidental to the primary purpose for which the records series was created, such as the name of a salesperson or a vendor in a records series of purchase orders; and,
- f. Records series relating to procurement or budgeting by a state agency.

If the records associated with this RDA are derived from any of the information stated immediately above in a. through f., check YES in #14.

Note: When # 14 is checked YES, the information in this RDA will be excluded from the PII Registry. When checked NO, the information in this RDA will be included in the PII Registry.

15. Agency Program Contact or Records Officer: Provide the name, telephone number and email address for the agency's statutorily-designated Records Officer or other program contact, who may be contacted for further information regarding the record series.

16. Records Series is Confidential or Access is Limited:

- Check "yes" only if a specific statute, administrative rule, or other legal authority requires that all, or some, information in the record series be kept confidential or protected from public access. If "yes" is checked, identify the relevant statute, code, or other legal authority in #12.
- Some, but not all, personally identifiable information (PII) is confidential. At the same time, records that do not contain PII may be required by law to be kept confidential or have limited access.
- For purposes of record retention and destruction, Wisconsin's Public Records Law and related statutes govern public access to records including certain confidentiality provisions.

17. Approval Signatures: The Agency Records Officer, and at least one other agency official, such as the Agency Program Manager, Risk Manager, Legal Counsel, and/or the Legal Custodian of Records, must review, approve, and sign the RDA before submitting it to the PRB for approval. Prior to implementation, PRB approval and signature by the State Archivist are both required.

Contact information: for records management training and assistance, please contact the Wisconsin Department of Administration, Records Management Section, by telephone at: (608) 266-2995. Many records management resources are available at the Public Records Board website:

<http://publicrecordsboard.wi.gov>

Here are three helpful documents:

- a. [Statewide General Records Schedules](#)
- b. [Wis. Admin. Code ch. Admin 12](#)
- c. [Records Management Fact Sheets](#)



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the April 9, 2019 Meeting
TO: Members, Ethics Commission
FROM: Ethics Commission Staff
SUBJECT: Ethics Commission Staff Report

Attorney General Opinion Requests

The Commission has two pending requests for Attorney General Opinions. Staff has not received any follow-up concerning those opinions from the Department of Justice since the last Commission meeting.

Commission Administration

2019-21 Biennial Budget

The Governor's budget proposal was released on February 28, 2019. All standard budget adjustments and decision items that Commission staff included in the budget request were part of the Governor's proposed budget. In addition, the Administrator has also been discussing the Commission's agency budget request during meetings with legislators. Staff will keep the Commission updated throughout the budget process.

Procurement

Commission staff completed the process to re-procure an IT contractor to continue work on the three websites maintained by the Commission. The new contract began on April 1, 2019. This contract will be for 1 year, with two optional 1-year renewals.

IT Systems Update

- Commission Servers – Staff has determined that the Commission's servers need to be upgraded, as Microsoft is discontinuing software support of the current versions. This will substantially alleviate some of the load issues that are occurring near deadlines. These upgrades should occur before the new lobbying website is ready to launch. Staff is currently assessing the costs associated with the server upgrade and developing a software maintenance plan moving forward. Staff would like to upgrade the servers at the beginning of the fiscal year (July 1, 2019).
- Campaign Finance – Staff continue to weigh options for replacing the CFIS system. At the August 21, 2018, commission meeting, the Commission directed staff to begin exploring the possibility of redeveloping the campaign finance system through custom development and utilization of existing software from the State of Massachusetts. At the September 14, 2018,

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

Commission meeting, the Commission authorized staff to work with Department of Administration/Department of Enterprise Technology to do a preliminary review of the Massachusetts code, to verify the quality of the code, confirm that it provides the required security, and is adaptable to the needs and requirements of the Commission and state statutes.

Staff has been in contact with DET and the State of Massachusetts regarding these initial steps in redevelopment. The new code/system went live in December 2018, but they are still working on cleaning up their code documentation and will provide us the documentation when it is finalized. The targeted completion is by the end of March. In addition to the code documentation, they have provided staff with testing credentials for the website, so staff is able to learn how the system works. Staff will continue to contact the State of Massachusetts to request access to the code, and when it is received, we will proceed with the steps authorized by the Commission at the September 14 meeting.

- Lobbying – Our work with the Web and Mobile Solutions (WaMS) team through DoIT (Department of Information Technology) at the University of Wisconsin—Madison to modernize the Eye on Lobbying website will continue at the beginning of the new fiscal year. Staff is currently working to define the detailed scope of each phase of the project and is excited to resume work to complete the project.
- Statements of Economic Interests – Staff is working on design and construction of the candidate filing screens for the SEI website. Electronic filing for candidates will be available by December 2019 for the Spring 2020 election period.
- Customer Relationship Management (CRM) software – Staff will continue to gather information about and working towards implementing CRM for internal agency use. Staff has decided to lower this project priority to focus on updates to the Lobbying and Campaign Finance systems.

Campaign Finance

Spring Pre-Election / Special Pre-Primary

Spring Pre-Election and Special Pre-Primary reports were due March 25, 2019. There were 20 candidates for the Spring Election required to file. One candidate has not filed the report on time. There were three candidates for the Special Election in the 64th Assembly District, and all three filed their report on time.

Future Campaign Finance Reports

The following reports will be required in the next three months:

- Special Pre-Election Report Due: 4/22/2019
- Special Post-Election Report Due: 6/14/2019
- July Continuing 2019 Due: 7/15/2019

Audits

Staff will conduct a cash balance discrepancy audit covering activity from the Fall Pre-Election 2018 to the January Continuing 2019 reports. Ahead of the cash balance discrepancy audit, staff has sent courtesy emails to committees regarding pending transactions that were entered into CFIS but not filed in any report. Many cash balance issues are the result of duplicate pending transactions. Assisting committees to resolve these pending transactions has the added benefit of assisting them to avoid a cash balance discrepancy in the future. Initially, there were 136 committees with pending transactions. As of March 25, 2019, there were 27 committees with pending transactions.

Staff ran a contribution limits audit, covering both individual and committee contributions for the Spring 2018 Election, on 3/11/2019. No violations of contribution limits were found.

Lobbying

2019-2020 Legislative Session

As of March 25, 2019, there are 685 lobbying principals registered, 563 lobbyists licensed, and 1,415 lobbyist authorizations.

Statutes require each lobbying principal to submit a Statement of Lobbying Activities and Expenditures (SLAE) twice a year. The next deadline is July 31, 2019, which will cover activity from January 1 – June 30, 2019. After principals and lobbyists file their reports, staff will conduct audits for late SLAEs, late 15-day reports, lobbying without authorization, and late payment of lobbying fees.

Legislative Liaison Reporting

The next legislative liaison report is due July 31, 2019.

Code of Ethics and Financial Disclosure

Design of a new SEI system

Kavita is working on adding functionality so candidates will be able to file SEIs online beginning with the 2020 Spring Election.

Statements of Economic Interests

The deadline for annual filing of SEIs is April 30, 2019. This year is a little more complicated because of the election and gubernatorial transition. Departing officials that serve even one day in 2019 must file a 2019 SEI, and officials that start service, or begin a new term of office, must file within 21 days. The deadline for candidates in the Spring Election to submit their SEIs was January 7th, 2019.

As of February 19th, there are 2,512 total filers required to file an SEI for 2019. There were 210 filers who were sworn in or appointed to a new term on 1/7/2019, and all those filers filed within

the 15-day grace period. As of 3/25/2019, 1,431 SEIs for 2019 have already been filed. Reminders will be sent out one month, one week, and one day before the deadline.

State of Wisconsin Investment Board Quarterly Reports

The next batch of quarterly reports will be due by April 30th, covering January 1st through March 31st.