

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, St. Croix Room
Madison, Wisconsin
Tuesday, December 3, 2019, 9:00 a.m.

Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Staff Counsel
- C. Approval of Minutes of Prior Meetings
 - 1. Open Session Minutes for Meeting on August 20, 2019 Page 3
 - 2. Open Session Minutes for Meeting on November 13, 2019 Page 9
- D. Personal Appearances
- E. Review of Ethics Opinions of Previous Boards Page 11
- F. Attorney General Opinion Requests Page 25
- G. Administrative Rules Update and Hearing Page 37
- H. Campaign Finance Audit Procedure – Occupation and Address Information Page 43
- I. Request for Lobbying Program Revenue Use Page 49
- J. IT Projects Report Page 51
- K. Staff Report Page 53
- L. Proposed Meeting Dates for 2021 Page 57
- M. Consideration of Future Agenda Items
 - 1. Complaints and Opinions Rulemaking Page 59
- N. Closed Session
 - 1. Requests for Advice
 - 2. Complaints and Investigations
 - 3. Personnel Matters
- O. Adjourn

Future Ethics Commission Meetings Scheduled:

- Tuesday, March 3, 2020 at 9:00 AM
- Tuesday, June 16, 2020 at 9:00 AM
- Tuesday, August 18, 2020 at 9:00 AM
- Tuesday, October 13, 2020 at 9:00 AM
- Tuesday, December 8, 2020 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:

- (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- (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
Yahara Room
Madison, Wisconsin
August 20, 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, Richard Bohringer, Harry Broderick,
Colette Greve, Adam Harvell, Caroline Russell, and Deb Brauer

A. Call to Order

Commission Chair Katie McCallum called the meeting to order at 9:04 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 June 18, 2019 Open Session Meeting

MOTION: Approve the June 18, 2019 open session minutes. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried unanimously.

D. Personal Appearances

There were no personal appearances by a member of the public

E. Legislative Recommendations and Approval of Draft Bill

Commission Administrator Dan Carlton presented the memo on page 9 of the meeting materials.

MOTION: The Commission approved the draft bill as presented. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

F. Ethics Opinion Review

Ethics Specialist Colette Greve presented the memo on page 77 of the meeting materials.

MOTION: The Commission withdrew Eth. Bd. Op. 95-06. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously.

MOTION: The Commission withdrew Eth. Bd. Ops. 92-31 and 93-08. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: The Commission reaffirmed Eth. Bd. Ops. 91-02, 92-33, 94-03, 95-01, 95-03, 96-03, 97-01, 98-14, 99-08, 04-06, 07-02, 07-03, 07-05, 07-10, 2008 GAB 02, 2008 GAB 09, and 2009 GAB 02. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

G. Administrative Rules Update

Staff Counsel David Buerger presented the memo on page 85 of the meeting materials.

The Commission discussed the recommendations provided in the memo, and directed staff to include specific instructions for font size depending on the size of the material. Using 10-point font is appropriate up to a sheet sized 8.5” by 11”, and 12-point font for items between 8.5” by 11” and 24” by 36”. Any items larger than that would require the attribution be 4% of the size of the font on the item. The Commissioners directed staff to remove bumper stickers and clothing from the list of items not requiring an attribution. Small online ads and other similar communications (item e) should be moved to the end of the list.

MOTION: For ETH 1 – Act 117 Amendment/Attributions, the Commission approved the draft as revised based on discussion in the meeting. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

Regarding ETH 26, Commissioner Packard directed staff to replace “unauthorized lobbying” with “lobbying prior to authorization” throughout the document.

MOTION: For ETH 26 – Settlement Schedules, the Commission approves the draft statement of scope with the revisions as discussed and directs staff to submit it to the Department of Administration and the Governor for review and approval. Moved by Commissioner Van Akkeren, seconded by Commissioner Packard. Motion carried unanimously

MOTION: For ETH 1 – Comprehensive Review of ETH 1 for consistency with statute, the Commission approves the draft statement of scope and direct staff to submit it to the Department of Administration and the Governor for review and approval. Moved by Commissioner Van Akkeren, seconded by Commissioner Packard. Motion carried unanimously.

H. Consideration of Guidance Documents

Staff Counsel David Buerger presented the memo on page 111 of the meeting materials.

MOTION: The Commission adopted ETH-1211. Moved by Commissioner Davis, seconded by Commissioner Packard. Motion carried unanimously.

The Commission discussed guidance document ETH-1253, and directed staff to draft guidance in the future specific to legislative staff social media usage.

MOTION: The Commission adopted ETH-1253. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

MOTION: The Commission adopted the remaining guidance documents as presented. Moved by Commissioner Van Akkeren, seconded by Commissioner Davis. Motion carried unanimously.

I. Review Settlement Schedules

Ethics Specialist Colette Greve presented the memo on page 285 of the meeting materials.

MOTION: For late special post-election reports, approve as presented on page 287 of the materials. Moved by Commissioner Davis, seconded by Commissioner Strachota. Motion carried unanimously.

MOTION: The Commission removed late September reports from the schedule for late continuing reports and combined it with the schedule for late pre-primary and pre-election reports. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried 5-0, Commissioner Halbrooks absent.

MOTION: For settlement amounts for late continuing reports, the Commission adopted the schedule as described on page 288 of the meeting materials, and clarified the schedule is calendar days. Moved by Commissioner Van Akkeren, seconded by Commissioner Davis. Motion carried 5-0, Commissioner Halbrooks absent.

MOTION: The Commission clarified the campaign finance settlement schedules to indicate calendar days for all schedules. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried 5-0, Commissioner Halbrooks absent.

MOTION: The Commission clarified the settlement schedule for late report of first communication on a lobbying matter to be calendar days. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried 5-0, Commissioner Halbrooks absent.

MOTION: The Commission clarified the settlement schedule for late filing of statement of economic interest to be calendar days. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried 5-0, Commissioner Halbrooks absent.

J. Convenience Fees for Electronic Payments

Ethics Specialists Caroline Russell and Rich Bohringer presented the memo on page 307 of the meeting materials.

MOTION: The Commission modified the convenience fees for lobbying payments, to increase to 2.5%. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: The Commission set the convenience fees for credit and debit card payments of campaign finance filing fees to 2.5%. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried 5-1, Commissioner Davis voted no.

K. Campaign Finance Auditing Procedure – Address/Occupation Information

Ethics Specialists Adam Harvell and Richard Bohringer presented the memo on page 311 of the meeting materials.

The Commission discussed the process for the audit, and directed staff to develop a plan for review at the next meeting. Staff will reanalyze the data and present numbers for 95% compliance, with 0, 5, and 10 potential violations. Staff will also attempt to analyze contributions mission information based on the contribution amount.

L. Lobbying Law and Due Process

Legal intern Deb Brauer presented her research and memo from the supplemental materials.

The Commission took no action based on the information presented.

M. Annual Report Review Draft

Commission Administrator Dan Carlton presented the draft report on page 317 of the meeting materials.

MOTION: The Commission approved the draft 2019 Annual Agency Report, and adopted the policies therein. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried unanimously.

N. IT Projects Report

Commission Administrator Dan Carlton presented the report on page 383 of the meeting materials.

The Commission took no action.

O. Staff Report

Commission Administrator Dan Carlton presented the report on page 385 of the meeting materials.

The Commission took no action.

P. Consideration of Future Agenda Items

The Commission did not discuss any future agenda items.

Q. Closed Session

MOTION: To go into closed session. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

- 1. Request for Advice
- 2. Complaints and Investigations

R. Discussion of Administrator Assignments, If Any

The Commission did not discuss any administrator assignments.

S. Adjourn

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

Meeting adjourned at 5:17 p.m.

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August 20, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist December 3, 2019

August 20, 2019 Wisconsin Ethics Commission meeting minutes certified by:

Tamara Packard, Vice Chair December 3, 2019



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Wisconsin Ethics Commission

Teleconference Meeting
101 E. Wilson Street
Pecatonica Room
Madison, Wisconsin
November 13, 2019
11:00 a.m.

Open Session Minutes

Present (via phone): Katie McCallum, Tamara Packard, Mac Davis, David Halbrooks,
and Pat Strachota

Staff Present: Daniel Carlton, David Buerger, Harry Broderick, Colette Greve,
and Julie Nischik

A. Call to Order

Commission Chair Katie McCallum called the meeting to order at 9:04 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 Notice of Hearing on Scope Statement

Staff Counsel David Buerger presented the memo on page 3 of the meeting materials.

MOTION: The Commission approved the notice of the hearing on the scope statement. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

D. Closed Session

MOTION: To go into closed session. Moved by Commissioner Strachota, seconded by Commissioner Packard. Motion carried unanimously.

1. Complaints and Investigations

E. Adjourn

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

Meeting adjourned at 11:22 a.m.

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November 13, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist December 3, 2019

November 13, 2019 Wisconsin Ethics Commission meeting minutes certified by:

Tamara Packard, Vice Chair December 3, 2019



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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Colette Greve, Ethics Specialist

SUBJECT: Review of Ethics Opinions of Previous Boards –
Conflict of Interest for State Public Officials

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 conflicts of interest for state public officials.

The attached spreadsheet provides a link to each opinion, a summary of the advice given by the previous boards and the staff recommendation. Staff is recommending that one opinion be revised, one opinion be reviewed by the Commission, and the remaining opinions (thirty-five) in this group be reaffirmed.

Relevant Statutes

The most relevant statute section for this opinion subject is [WIS. STAT. § 19.59](#) but many of these opinions also reference and contain analysis under [WIS. STAT. §§ 19.42](#). 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 Revision

1. [Eth. Bd. Op. 01-01](#) – This opinion contains a citation to the old version of Wisconsin Statutes Chapter 11. The old citations could be revised to correctly cite the current statutory sections, as the language remained the same, the statutes were just renumbered.

Opinions Recommended for Commission Review

Staff recommends that the following opinion be reviewed as it may be inconsistent with how the Commission would provide advice:

1. [Eth. Bd. Op. 03-08](#) – Staff is requesting the Commission review this opinion, as there is some concern that the last section, paragraphs 6 and 7 do not apply the law correctly. First, these paragraphs cite to [WIS. STAT. § 19.59 \(1\)\(b\)](#), which provides:

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

The analysis appears to be arguing that this statute prohibits taking official action because of a benefit to the requestor's employer. However, it might be a better reading of that statute to interpret it as being a prohibition on a person offering or giving, and an official soliciting or accepting, a thing of value if that thing of value could be seen as a reward or being given to influence the official action. The difference is whether the Commission views this statute as prohibiting the solicitation and acceptance of things of value or sees it as a further restriction on conflicts of interest. If the Commission believes the statute is the former, then the analysis is incorrect. If it sees it as a further restriction on conflicts of interest, then the Commission may wish to reaffirm or maybe revise to clarify the holding better. There is also concern that the advice given in these closing paragraphs fails to address the outside employment clause in [WIS. STAT. § 19.59 \(1\)\(b\)](#), which provides that subsection (b) does not prohibit a local public official from engaging in outside employment.

Attachments:

- A. Ethics Opinions Spreadsheet for December 3, 2019 Commission Meeting
- B. Eth. Bd. Op. 03-08 Full Text

Subject	Opinion Number	Summary of opinion	Staff Recommendation
Local Officials - Disqualification	Eth. Bd. Op. 92-10	A local public official is not disqualified from participating in the award of a contract to a business simply because that business is involved in an unrelated joint venture with the official's employer. OEB 92-10 March 24, 1992	Reaffirm
Local Officials - Disqualification; Improper Use of Office	Eth. Bd. Op. 92-20	The Ethics Board recommends that a village board member not participate in official discussions, deliberations, and votes with respect to legislation affecting his or her business unless the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board members' private interest is neither significantly greater nor less than upon other interests affected by the act. The village board member ought not to participate in quasi-judicial deliberations or decisionmaking affecting his or her own business or competing businesses. OEB 92-20 May 12, 1992	Reaffirm
Local Code - Disqualification; Local Code - Improper Use of Office	Eth. Bd. Op. 92-28	A village engineer should not act in an official capacity with respect to the review of plans the engineer has prepared in a private capacity or submitted by developers with which the village engineer is associated. OEB 92-28 (September 15, 1992)	Reaffirm
Local Code - Disqualification; Local Code - Improper Use of Office	Eth. Bd. Op. 92-22	A village board member should not participate in official discussions, deliberations and votes with respect to legislation (that is, ordinances and the like) affecting his or her real estate interests except to the extent that the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board member's private interests is neither significantly greater nor less than upon other interests affected by the act. The village board member ought not to participate in quasi-judicial deliberations or decision-making such as actions on permits, licenses, rezoning of specific parcels, and the like affecting the member's interests or competing real estate interests. In those instances in which the member should refrain from votes, the member should also refrain from discussion and deliberations and ask that the minutes reflect that the member has withdrawn. OEB 92-22 June 16, 1992	Reaffirm
Local Code - Disqualification; Employment Conflicting with Official Duties; Improper Use of Office	Eth. Bd. Op. 94-04	The Ethics Board advises that a member of a city council that is a negotiator for a labor union in other municipalities should not participate in any official discussions or vote on the Union's contract with the city on whose council the member serves; should not use any information not available to the public, derived from the council member's holding public office, to benefit the Union in other municipalities; and should not be present during closed sessions in which labor negotiations with the Union are being discussed. OEB94-4 (August 31, 1994)	Reaffirm

Local Code - Disqualification; Employment Conflicting with Official Duties; Improper Use of Office	Eth. Bd. Op. 94-05	The Ethics Board advises that two city council members should not participate in any official discussions, consideration, or vote concerning a city's lease or purchase of a building while each simultaneously derives income from a business that itself has, or from a business whose principal owner has, a direct financial stake in the outcome of the city's decision. OEB94-5 (September 28, 1994)	Reaffirm
Local Code - Disqualification; Employment Conflicting with Official Duties; Improper Use of Office	Eth. Bd. Op. 94-06	The Ethics Board advises that a member of the governing body of a local government unit should not participate in any labor issues in which a union is involved or that could affect the union's interests while the member's law firm simultaneously represents that union. OEB-94-6 (September 28, 1994)	Reaffirm
Local Code - Disqualification; Employment Conflicting with Official Duties; Improper Use of Office	Eth. Bd. Op. 94-06 Supplemental	A member of the governing body of a local governmental unit should not participate (1) in labor issues in which a union that is a client of the member's law firm, or one of that union's members, is a party or (2) in labor matters involving other unions that could have a precedential effect on issues affecting the client. The board member may participate in other policy matters as long as those matters have no more than an incidental effect on the union and its members. OEB-94-6 Supplement (December 28, 1994)	Reaffirm
Local Code - Disqualification; Employment Conflicting with Official Duties; Improper Use of Office	Eth. Bd. Op. 94-07	A town board member should not as a matter of policy, participate in the town's consideration of a landfill expansion as long as the member derives financial benefit from his or her spouse's employment by a company owned by the individual owning the controlling interest in the landfill operator. A town board member may participate in such a decision without restriction from laws administered by the Ethics Board where the town board member's child is so employed and the member's child neither supports nor derives support from the town board member. (OEB94-7) October 20, 1994	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 96-09	The Ethics Board advises that §19.59, Wisconsin Statutes, does not bar a local government official (1) from acting in a matter concerning another body politic with which the official is associated or (2) from acting in a matter that could affect the financial interests of an organization to whose board of directors the local governmental unit has appointed the official pursuant to statute, ordinance, or resolution to represent the interests of the local government. A local government official may not simultaneously be an officer or director of a private organization (in a capacity other than as a representative of the local governmental unit's interests) and (a) take official action substantially affecting the organization or (b) use his or her public office to produce a substantial benefit for the organization. OEB 96-9 (July 31, 1996)	Reaffirm

Local Code - Disqualification	Eth. Bd. Op. 96-10	A city council member who is a retired city employee and who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts. A city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts. A city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance. OEB 96-10 (July 31, 1996)	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 96-12	A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially. A member of a local unit of government's legislative body to whose business the tourism organization will furnish a substantial benefit through the use of room tax revenues should not participate in discussions or votes to establish a room tax. OEB 96-12 (July 31, 1996)	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 96-13	A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of a tourism organization and participate in discussions or votes to establish a room tax to support the organization financially. A member of a local unit of government's legislative body who is a director of a tourism organization generally should not participate in a decision concerning room tax receipts if the decision could substantially affect the level of receipts earmarked for the organization. If decisions on these issues are presented to the legislative body in the form of an ordinance or ordinance amendment, then a member of that body who also serves on the board of the tourism organization should not act in a way that aids the organization of which he or she is a director. OEB 96-13 (July 31, 1996)	Reaffirm

Local Code - Disqualification	Eth. Bd. Op. 97-06	The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district: (1) not participate in negotiations, discussions, or votes on the teachers' contract; (2) may vote on the district's budget if the school board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits; (3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner; (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision; (5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member's spouse does not differ materially from the effect on other teachers. The Ethics Board advises that a school board member who is covered by the school district's health benefits plan not participate in consideration of the terms of that plan or the award of the district's health benefits contract. (September 5, 1997)	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 98-01	The Ethics Board advises: that a member of a municipality's governing body who lives in an unsewered subdivision may, consistent with §19.59, Wisconsin Statutes, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.	Reaffirm
Local Code - Improper Use of Office	Eth. Bd. Op. 98-04	The Ethics Board advises that, under §19.59, Wisconsin Statutes, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county's building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.	Reaffirm
Local Code - Disqualification, Recusal	Eth. Bd. Op. 99-03	A village trustee should not participate in the discussion, consideration, or vote on a proposal to ban or regulate a business activity in the village in which the trustee is engaged unless the trustee can demonstrate that the trustee's official actions will not result in a substantial financial gain, or avoidance of a substantial financial loss, for the trustee's business.	Reaffirm
Local Code - Disqualification, Conflict of Inter	Eth. Bd. Op. 98-01	The Ethics Board advises: that a member of a municipality's governing body who lives in an unsewered subdivision may, consistent with §19.59, Wisconsin Statutes, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.	Reaffirm

Local Code - Conflict of Interest	Eth. Bd. Op. 98-04	The Ethics Board advises that, under §19.59, Wisconsin Statutes, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county's building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 00-02	The Ethics Board advises that: In the case of a county board supervisor who has been selected as a member of an insurance company's board of directors by the company's organizer, the supervisor should not participate in county board consideration, discussion, or votes to award a contract to the company or to change county policy to permit the purchase of services from the company.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 00-04	The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government's interests on the board, §19.59, Wisconsin Statutes, does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.	Reaffirm
Local Code - Disqualification; Improper Use of	Eth. Bd. Op. 01-01	The Ethics Board advises: (1) that local governmental officials should not accept free or discounted admission to events at a facility owned by the local governmental unit; (2) that, except as just stated, statutes administered by the Ethics Board are not an obstacle to the facility's oversight authority using, for the conduct of official business, a conference room that looks out on events; (3) that a local governmental official may not use the conference room for a non-governmental purpose unless the use of private rooms, or admission to private rooms, is for sale to the general public for the pertinent event, and then only under the same terms and conditions available to the public; and (4) that statutes administered by the Ethics Board are not an obstacle to the local governmental unit's making the conference room available to charitable organizations; however, a local governmental official should not use his or her position to arrange for use of the conference room by an organization of which the official is an officer, director, or authorized representative or agent. Because the room is a public facility, other laws may govern the room's use.	Revise

Local Code - Disqualification	Eth. Bd. Op. 02-01	The Ethics Board advises: 1. As long as the effect of teacher contract negotiations on the salary and benefits provided to school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union. Resolution of the issue requires a determination of fact that cannot be made in an opinion. A school district's attorney is in a better position to ascertain this fact. 2. A school board and superintendent should amend the superintendent's employment contract to remove a provision that ties the superintendent's salary increases to increases provided to district administrators.	Reaffirm
Local Officials - Disqualification	Eth. Bd. Op. 02-02	The Ethics Board advises that : 1) Under §19.59, Wisconsin Statutes, the village trustee whose property abuts the property that is the subject of the company's rezoning petition, and who is an employee of the company, should not participate in discussion, debate, or votes on the petition; 2) Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who is an employee of a company that sells supplies to the company seeking the rezoning to vote on the petition; and 3) Section 19.59, Wisconsin Statutes, is unlikely to restrict the village trustee who owns a company that, in the past, has done business with the company seeking the rezoning to vote on the petition.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 02-04	The Ethics Board advises: If a county's contract with a union will provide a significant precedent for a union contract in which a county board supervisor has a personal financial interest, then the supervisor should not participate in negotiations, discussions or votes on the former. If the effect of the county's contract on the contract covering the supervisor is merely conjectural or inconsequential, the supervisor may participate in decisions concerning that contract.	Reaffirm
Local Code	Eth. Bd. Op. 02-05	The Ethics Board advises: The effect of building a public facility on the value of an official's adjacent property is a factual one. The factual assessment is important but is not one we can make. In the absence of anything other than conjecture about that effect, public policy favors a public official's exercise of official duties. But the official, at his or her discretion, may abstain from participation if the official believes participation is likely to undermine citizen confidence in the county's government. Therefore: (1) If building the public facility on adjacent property will, or is reasonably likely to have a financial effect on the official's land, the official SHOULD ABSTAIN from participation in the decision. (2) In the absence of any financial effect, the official SHOULD PARTICIPATE; and (3) If the effect is conjectural or attenuated, the official SHOULD PARTICIPATE UNLESS, in the official's judgment, to do so would undermine public confidence in the decision or in government.	Reaffirm

Local Officials	Eth. Bd. Op. 02-07	The Ethics Board advises: If a member of a village board participated in the village's decision to hire him to supervise a village project, then he should return the checks he has received and not accept any payment for the services he has provided. If the member of the village board abstained from participating in the village's earlier decision, then §19.59, Wisconsin Statutes, permits him to accept payment for the services he has provided.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 03-08	The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.	Commission Review
Local Code - Disqualification	Eth. Bd. Op. 03-09	The Ethics Board advises that a special purpose district reconsider its vote because a commissioner who voted to distribute a large monetary refund to original members of the district would be a recipient of that sum. In any new vote on the same proposal, the commissioner who would receive the distribution should abstain from any participation in discussion, debate, or vote.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 03-09A	Supplemental to Eth. Bd. Op. 03-09	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 03-17	The Ethics Board advises that a member of the Village's governing board may participate in the consideration or decision about improvements the village will make to the village's sewage system and the financing of those improvements as follows: 1. If the sewer improvement does not personally and substantially benefit the property interest of a village trustee, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met. 2. If the sewer improvement personally and substantially benefits the property interest of a village trustee, but the improvement also confers a substantial benefit on all or a sizeable portion of the village's property owners, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met. 3. If the sewer improvement produces a substantial or personal benefit to the trustee's property interest that is not common to all or a sizeable portion of the village's property owners, but the village assesses the improvements' costs to the property owners who are the beneficiaries of the improvement, the trustee is disqualified neither from participating in the designation of the sewer improvement nor from determining how the improvement's cost will be met. 4. If the sewer improvement produces a substantial or personal benefit to the trustee's property interest that is not common to all or at least to a sizeable portion of the village's property owners, and the village assesses the improvements' costs to all of the village's property owners or at least to property owners who do not benefit from the improvements ordered, the trustee should not participate in discussions and actions that have as their goal the transfer of the costs of the sewer improvements to the trustee's property to others in the village.	Reaffirm

Local Code - Conflict of Interest	Eth. Bd. Op. 04-05	The Ethics Board advises: A member of a county board who serves as a trustee of the county's nursing home facility, whose mother is a resident of the facility, should not use her position to obtain anything of substantial value or a substantial benefit for the official personally or for a member of the official's immediate family. Whether that will, or is likely to occur, is a question of fact that the Ethics Board cannot resolve. If a matter comes before the nursing home board that would have a financial effect on the supervisor or the supervisor's immediate family, then she should abstain from participation in the matter. If her need to recuse herself becomes so frequent as to impede her ability to contribute to the nursing home board, then the better alternative is that another individual take her place.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 05-02	The Ethics Board advises: 1) That the retired teacher who is a member of the school district's board of education should not vote on the resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy if that is likely to affect the health benefits the member receives; but 2) That the retired teacher who is a member of the school district's board of education may vote on the resolution if its effect on the member's health benefits is remote and speculative.	Reaffirm
Local Code - Disqualification	Eth. Bd. Op. 05-04	The Ethics Board advises: 1. A school board member, who is a retiree of the district, should not take any vote on the budget if resolution of the matter is likely to affect the level of health insurance premiums the school district will contribute to retirees. 2. The school board member may vote on a budget matter if any effect on the member's health benefits is remote and speculative. 3. Application of these principles depends on the facts. A local school board attorney is in a better position to resolve this factual issue than are we.	Reaffirm

Local Code - Disqualification	Eth. Bd. Op. 05-05	The Ethics Board advises that a board member of an institution of higher education whose spouse is employed as a teacher by the institution: (1) not participate in negotiations, discussions, or votes on the teachers' contract; (2) may vote on the institution's budget if the board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits; (3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner; (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a board member's spouse obtaining a substantial benefit or anything of substantial value from such decision; (5) may participate in decisions affecting teaching load, teaching hours, and other general policy decisions if the effect on the board member's spouse does not differ materially from the effect on other teachers; and (6) if the board member is covered by the institution's health benefits plan, not participate in consideration of the terms of that plan or the award of the institution's health benefits contract. The Ethics Board further advises that abstention does not avoid a conflict, it simply mitigates it. If the above restrictions materially impede the board member's ability to fulfill his or her responsibilities as a public official, or conflicts are frequent and continuing, the member should consider withdrawing from the position so that another appointee may participate fully in the activities of the board.	Reaffirm
Local Officials - Disqualification	Eth. Bd. Op. 07-09	The Ethics Board advises: (1) If a matter before a town board, is reasonably likely to have more than a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD ABSTAIN from discussion, deliberation, and votes on that matter. (2) If a matter before a town board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD PARTICIPATE; and (3) If reasonable people cannot reasonably foresee the effect of a board of supervisors' action on a supervisor's financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor's financial interest is too speculative to deny the supervisor's participation in related discussion, deliberation, and votes, and the supervisor SHOULD PARTICIPATE UNLESS, in the supervisor's judgment, to do so would undermine public confidence in the decision or in government.	Reaffirm
Local Code - Disqualification	2009 GAB 04	The Government Accountability Board advises: 1) A town supervisor may participate in discussions and votes related to a proposed room tax ordinance, notwithstanding his ownership of properties which would be subject to the ordinance, because any potential financial impact is remote and speculative.	Reaffirm

2003 Wis Eth Bd 08
LOCAL CODE -- DISQUALIFICATION

The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.

Facts

¶1 This opinion is based upon these understandings:

- a. You represent a Town.
- b. You write on behalf of the town chair.
- c. The town chair is an employee of Company A.
- d. Company A is solely owned by an individual.
- e. The individual also owns Company B, which has, for many years, contracted with the Town to provide certain services.
- f. As part of his employment by Company A, the town chair sometimes provides services to the Town for Company B.
- g. Company B also provides other services to the Town pursuant to contract.
- h. The town chair acts as the Town's overseer for these services.

Questions

¶2 The Ethics Board understands your question to be:

Under §19.59, *Wisconsin Statutes*, what, if any, restrictions does the town chair's employment by Company A place on his participation in Town decisions regarding the services provided to the Town by Company B?

Discussion

¶3 You have expressed the view that the best course of action would be for the town chair to refrain from making decisions about services provided to the Town by Company B while that company contracts with the Town to provide these services. We agree.

Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for himself or herself or for an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.¹ In addition, the statute prohibits a local public official from accepting anything of value “if it could reasonably be expected to influence the local public official’s vote, official actions or judgment.”² A member of a town board is a local public official subject to §19.59.³

Use of Office

¶4 Under the terms of the statute, an official is deemed associated with an organization if the official or a member of the official’s immediate family

“is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.”

§19.42(2), *Wisconsin Statutes*.

¶5 In the present case, the town chair is not associated, within the meaning of the statute, with either Company A or Company B. Thus, unless the town chair’s employment or compensation would be affected by the

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.59(1)(b), *Wisconsin Statutes*.

³ Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective town office.

Town's decisions regarding plowing or road or ditch repair, §19.59(1)(a) and (c) are unlikely to serve as a bar to his participation in these decisions.

Influencing Judgment

¶6 Section 19.59(1)(b) provides that an official may not accept anything of value if it could reasonably be expected to influence the official's vote, actions, or judgment.⁴ In addition, a public officer owes an undivided duty of loyalty to the public whom he or she serves.⁵

¶7 In our view, common sense tells us that it is reasonable to expect an individual's judgment to be affected when acting on a matter in which the individual's employer has a demonstrated financial interest.⁶ Although the town chair works for Company A, his employer is the sole owner of both that company and Company B. Moreover, the concern is especially real when the town chair's job duties will be affected by the Town's decisions. Thus, the town chair should avoid participating in any decision affecting the performance of work for the Town by Company B.⁷

Advice

¶8 The Ethics Board advises that the town chair should not simultaneously participate in Town decisions concerning services provided to the Town by Company B and be employed by Company A.

RRJ:jb
WR1145

⁴ Section 19.42(1), *Wisconsin Statutes*, defines "anything of value," in relevant part, as

[A]ny money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment

⁵ 14 Op. Eth. Bd. 41 (1993); 14 Op. Eth. Bd.25 (1992); 14 Op. Eth. Bd. 21 (1992); 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

⁶ 1994 Wis Eth Bd 05. *See also, e.g., Zagoreos v. Conklin*, 491 N.Y.S.2d (A.D. 1985); *Sokolinski v. Woodbridge Township Municipal Council*, 469 A.2d 96 (N.J. Super. A.D. 1983).

⁷ Our advice is consistent with the view of the courts expressed in several cases that if a local official votes on a contract in which the official's employer has an interest, the contract is void. *Heffernan v. City of Green Bay*, 266 Wis. 534 (1954) (if alderperson who voted to approve contract had been employee of individual's company when another company owned by the individual bid for the contract, the contract would have been illegal and void); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (Wis. 1921); *Ballenger v. Door County*, 131 Wis. 2d 422 (Ct. App. 1986).



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Daniel A. Carlton, Jr., Administrator

SUBJECT: Attorney General Opinion Request

FOR COMMISSION ACTION

For this agenda item, the Commission may:

1. Request the Department of Justice to issue the opinion;
2. Request the Department of Justice consider the opinion withdrawn; or
3. Take other action as determined at the meeting.

This memo concerns the request to the Department of Justice for an Attorney General’s Opinion from the Government Accountability Board (“G.A.B.”) on the question of the constitutionality of [WIS. STAT. § 13.68\(6\)](#). That provision allows the Commission to suspend the privilege of a lobbyist to lobby on behalf of a principal when the principal fails to timely file a complete expense Statement of Lobbying Activities and Expenditures (“SLAE”).¹ The provision is not mandatory, rather it gives the Commission the authority to decide whether to use that power. Despite this grant of permissive authority, the Legislative Audit Bureau in [Audit Report 14-14](#)² recommended that the G.A.B. staff begin prohibiting lobbyists from lobbying for a principal when their principal has failed to timely file their SLAE. The G.A.B. had questions concerning whether such action would be constitutional and decided to request an Attorney General’s Opinion. According to Commission records, the Director and General Counsel of the G.A.B. requested the opinion on June 19, 2015.

Recently, the Commission’s Administrator was contacted by the Department of Justice concerning this request. Specifically, the Department’s staff inquired whether the Commission still wanted an opinion issued. After this conversation, the Administrator reviewed all pertinent Commission files, including the meeting minutes. The Administrator was unable to locate any record that indicated that the Commission wished to have the opinion requested by the G.A.B. pursued or issued. Therefore, it was unclear whether this Commission would want the opinion issued.

¹ The Commission members may recall that this issue was discussed at the Commission’s meeting on August 20, 2019, when the Commission Legal Intern prepared a memorandum discussing the legal questions concerning this statute. The ultimate conclusion of that memo is that, while there may be constitutional questions concerning the statute, it has not been necessary for the Commission to use its legal authority to suspend a lobbyist’s privileges.

² The full audit report is not attached to this memo due to the fact that that report is 110 pages. However, the blue hyperlink will lead directly to that audit report.

It is important to note that the Commission already gains compliance with the SLAE requirement through its audit processes and, where appropriate, issues settlements when a SLAE is not filed on time. This method of resolution achieves the goal of the statute, disclosure of the activities of those who seek to influence government, without the need to conduct meetings or hearings that may be required when using the suspension powers. To the best of the Administrator's knowledge, there has never been a circumstance where suspension is warranted.

The contents of the final opinion, if requested by the Commission, are not known. Apparently, the Department's staff has prepared a draft and, if requested by the Commission, would seek approval of that draft. Just as opinions of the Administrator here are subject to review and modification by the Commission, supervisors within the Department have the authority to modify that draft prior to issuance. The timeline for issuance of the opinion is not yet known.

Enclosures: G.A.B. Advisory Opinion Request
 Legal Intern Memorandum (presented 8/20/19)

State of Wisconsin \ Government Accountability Board

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JUDGE GERALD C. NICHOL
 Chairperson

KEVIN J. KENNEDY
 Director and General Counsel

Via Hand Delivery

June 19, 2015

The Honorable Brad Schimel, Attorney General
 Wisconsin Department of Justice
 State Capitol, Room 114 East
 Madison, Wisconsin 53702

Opinion Request: Constitutionality of WIS. STAT. §13.68(6)

Dear Attorney General Schimel:

I write on behalf of the Government Accountability Board (“G.A.B.” or “Board”) to ask your opinion as to whether WIS. STAT. §13.68(6) is constitutional. The statute provides that if a lobbying principal¹ fails to file a timely and complete six-month expense report, the Board may suspend any lobbyist’s privilege to lobby on behalf of that principal. The Board may suspend such lobbying privileges immediately upon failure to file and without a hearing.

The Board questions the constitutionality of WIS. STAT. §13.68(6) because the statute implicates a principal’s constitutional rights to free speech and procedural due process under both the United States Constitution and the Wisconsin Constitution. *See* U.S. CONST. amend. I; amend. IV, and amend. XV, §1; *see also* Wis. Const. art. I, §§1, 3; *see also County of Kenosha v. C & S Management, Inc.*, 223 Wis. 2d 372, 393 (1999) (holding that the language of the due process clause in the Wisconsin Constitution differs from the language of the due process clause in the United State Constitution, but the “two provide identical procedural due process protections.”).

The text of the statute is as follows:

SUSPENSION FOR FAILURE TO FILE A COMPLETE EXPENSE STATEMENT. If a principal fails to timely file a complete expense statement under this section, the board may suspend the privilege of any lobbyist to lobby on behalf of the principal. Upon failure of a principal to file the required expense statement, the board shall mail written notices to the principal and to any lobbyist for whom a written authorization has been filed under s. 13.65 to act as a lobbyist for the principal informing them that unless the principal files the delinquent statement within 10 business days after the date of mailing the notices, no lobbyist may lobby on behalf of the principal. The privilege of any lobbyist to lobby on behalf of the principal shall be restored immediately upon filing the delinquent statement. The notices shall be sent by certified mail to the last-known addresses of the principal and lobbyist.

¹ A “principal” is defined as “any person who employs a lobbyist. If an association, corporation, limited liability company or partnership engages a lobbyist, an officer, employee, member, shareholder or partner of the association, corporation, limited liability company or partnership shall not be considered a principal.” WIS. STAT. §13.62(12).

Any principal or lobbyist who is aggrieved by a suspension of lobbying privileges under this subsection may request a hearing under s. 227.42 regarding the suspension.

The Board has never suspended a lobbyist's privilege to lobby as permitted by this statute, but the Board has achieved 100% compliance with the lobbying law's filing requirements, albeit some principals file late. Nevertheless, in a December 2014 Audit Report 14-14, the Legislative Audit Bureau ("LAB") recommended that the G.A.B. staff "comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this provision[.]" WIS. LEGISLATIVE AUDIT BUREAU, GOVERNMENT ACCOUNTABILITY BOARD REPORT 14-14, 64 (Dec. 2014).

The plain language of the statute does not require the Board to act as the LAB suggested; the Board has discretionary authority only. "The board *may* suspend the privilege of any lobbyist to lobby upon behalf of the principal." WIS. STAT. §13.68(6) (emphasis added). This discretionary language of the statute is inconsistent with the LAB's directive that the G.A.B. is required to impose lobbyist suspensions.

The Board's concern is that the statute may infringe the due process clauses and free speech protections of the U.S. and Wisconsin Constitutions by permitting the Board to suspend an organization's ability to petition the Legislature without a prior hearing.

ANALYSIS

1. Wisconsin's Statutes Regulating Lobbying—a First Amendment Right—are Generally Constitutional Because They Survive a Strict Scrutiny Analysis of the State's Compelling Interest and the Minimal Imposition Upon Free Speech.

The Board accepts that Wisconsin's statutes that regulate lobbying are generally constitutional. Lobbying is a First Amendment-protected² right, and it is a right that governments may regulate. *See United States v. Harris*, 347 U.S. 612, 614-17 (1954) (confirmed Congress's right to require registration of lobbying); *see also Regan v. Taxation with Representation*, 461 U.S. 540, 552 (1983) (Blackmun, J., concurring) (declaring for the first time, albeit in a concurring opinion, that "lobbying is protected by the First Amendment."). Lobbying is also embodied in the Fourteenth Amendment. *NAACP v. Alabama*, 357 U.S. 449, 469 (1958) (The "freedom to engage in association for the advancement of beliefs and ideas [, which] is an inseparable aspect of the 'liberty' assured by the . . . Fourteenth Amendment."). Curtailments of the freedoms of speech and to engage in association are subject to the "closest" judicial scrutiny. *NAACP v. Alabama*, 357 U.S. at 460-61; *see also Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993) (holding that the standard of review of a law that prohibited lobbyists from furnishing personal services to a campaign is "rigorous" because the law directly prohibited constitutionally protected speech). Strict scrutiny only renders a right-curtailling law constitutional if the law

² Any reference to an "Amendment" in this analysis may refer to both the United States Constitution and the Wisconsin Constitution, if not specifically distinguished. Both constitutions protect the same rights at issue. The freedoms of speech and of association are protected by the First Amendment of the United States Constitution and Article I, Section 3 of the Wisconsin Constitution. Due process is protected by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 1 of the Wisconsin Constitution. *See County of Kenosha v. C & S Management, Inc.*, 223 Wis. 2d at 393.

advances a compelling governmental interest. *Barker*, 841 F. Supp. at 259. It is a compelling governmental interest to prevent government corruption. *Id.* Thus, the Board does not question that Wisconsin's reporting requirements for lobbying are generally constitutional insofar as they help prevent government corruption.

2. WIS. STAT. §13.68(6) is Unconstitutional Because it Permits the Board to Violate a Principal's Procedural Due Process Rights.

Although Wisconsin's lobbying laws are generally constitutional, WIS. STAT. §13.68(6) appears to give the Board discretion to unconstitutionally deprive a principal of its First Amendment right to lobby by circumventing a principal's procedural due process rights.

a. A Principal's Right to Lobby is a Liberty Interest Protected by the Fifth and Fourteenth Amendments to the United States Constitution.

The right to lobby, as a right to speech and a right to freely associate, is a constitutionally-protected liberty interest based on the First Amendment. *See NAACP v. Alabama*, 357 U.S. at 469. Laws that curtail First Amendment rights, regardless of the severity of the curtailment, invoke procedural due process rights. *Goss v. Lopez*, 419 U.S. 565, 575-76 (1975) (citation omitted); *see also Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 581 (1972) (The "First Amendment, applicable to the States by reason of the Fourteenth Amendment, protects the individual against state action when it comes to freedom of speech and of press and the related freedoms guaranteed by the First Amendment; and the Fourteenth protects 'liberty' and 'property[.]'"). WIS. STAT. §13.68(6) permits the Board to deprive a principal of a First Amendment-protected right to lobby, which invokes that principal's Fifth and Fourteenth Amendment rights.

b. The Board May Not Restrict a Principal's Liberty Interest Unless it First Affords the Principal Minimal Procedural Due Process Requirements.

Any government-imposed deprivation of life, liberty (such as the right to lobby), or property must be preceded by notice of the intended deprivation and the opportunity for a hearing "appropriate to the nature of the deprivation." *Goss*, 419 U.S. at 578-79 (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950)); *State v. I, A Woman-Part II*, 191 N.W.2d 897, 903, 53 Wis.2d 102 (1971). The nature of the deprivation may permit simultaneous notice and hearing, and the nature of the deprivation may also permit informal hearings. *Goss*, 419 at 579. However, regardless of the form of the notice and hearing, the notice and hearing must precede deprivation of the fundamental right. *Id.*; *I, A Woman-Part II*, 191 N.W.2d at 903. WIS. STAT. §13.68(6) permits the Board to deprive a principal of the right to lobby immediately upon notice but without first providing any kind of hearing. A hearing is required only upon the request of a principal after the Board imposes the deprivation.

c. Any Exceptions to Procedural Due Process are Not Applicable to WIS. STAT. §13.68(6).

Under certain circumstances, a government may deprive a fundamental right without first providing basic due process requirements. *Parratt v. Taylor*, 451 U.S. 527, 539 (1981). First,

due process's notice and hearing requirements are not necessary if: a) quick action is necessary: or b) meaningful pre-deprivation notice and hearing are impractical and the government may satisfy due process requirements soon after the initial deprivation. *Parratt*, 451 U.S. at 539. Second, due process's pre-deprivation hearing requirements are not necessary if the government temporarily imposes upon a proprietary, not fundamental, right, *and* the government provides a hearing before a final deprivation occurs. *Id.*; *see also Phillips v. Commissioner*, 283 U.S. 589, 596-97 (1931). Given that WIS. STAT. §13.68(6) invokes fundamental rights, these exceptions do not apply, and due process must be accorded.

3. WIS. STAT. §13.68(6) is Unconstitutional Because it Permits the Board to Impose Prior Restraint upon a Principal's Constitutionally Protected Free Speech.

Statutory restraints on constitutionally-protected speech prior to the speech's dissemination are prohibited. *Freedman v. Maryland*, 380 U.S. 51, 60-61; *Near v. Minnesota*, 283 U.S. 697, 722 (1931); *see also I, A Woman-Part II*, 191 N.W.2d at 902-03 ("The statute, to the extent that it permits the issuance of an ex parte interlocutory order prior to a determination of the merits in an adversary judicial proceeding [regarding a First Amendment right], is unconstitutional."). Like the statute in *I, A Woman*, WIS. STAT. §13.68(6) permits the Board to restrict constitutionally-protected speech before the speech is actually made. Such restriction constitutes an unconstitutional prior restraint.

REQUEST FOR OPINION

The Department of Justice has the authority to issue opinions on questions of law to provide direction for agency actions. WIS. STAT. §165.015(1). Pursuant to this authority, the Board seeks a formal Attorney General opinion to assist in its effort to properly administer WIS. STAT. §13.68(6).

The Board is concerned that if it effectively suspended a principal's right to lobby, as WIS. STAT. §13.68(6) permits, such suspension would deprive the principal of procedural due process rights and would constitute an unconstitutional prior restraint of free speech. This concern rests upon the above analysis of the constitutional protections implicated by the statute. The Board has directed staff to request an opinion of the Attorney General as to whether WIS. STAT. §13.68(6) is constitutional before the Board proceeds to either administer the statute as written or request that the Legislature change the statute. We appreciate your consideration of this request.

Sincerely,

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel



Wisconsin Ethics Commission

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 (608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the Commission Meeting on August 20, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Deb Brauer, Legal Intern

SUBJECT: Lobbying Law and Due Process

FOR COMMISSION ACTION

No action is required. This memorandum is for information only.

I. Introduction

Wisconsin statutes allow the Ethics Commission to suspend the authorization of a lobbyist to represent a principal when the principal fails to timely file semi-annual expense reports. The Legislative Audit Bureau recommended compliance with the statute as a result of a 2014 audit of the Government Accountability Board (GAB). The GAB expressed concern that the statute may violate free speech and due process requirements, but this has not been tested in court because the statute has never been applied.

Lobbying principals are required to file an expense statement two times per year. If a principal fails to timely file an expense report, the Commission has the authority to suspend the privilege of any lobbyist to lobby on behalf of the principal. In practice, this follows staff attempts to gain voluntary compliance such as through reminder emails sent during the five-day grace period following the filing deadline. To date, the Commission has been successful in achieving 100% reporting by principals, with only occasional need to contact principals to seek compliance after the deadline. In 2018, there were two late filings that resulted in settlements issued per Wis. ADMIN. CODE [ETH 26.03\(1\)](#). Ninety-nine percent of registered principals completed their Statements of Lobbying Activities and Expenditures (“SLAE”) on or before the required date in both 2017 and 2018.

A [2014 Legislative Audit Bureau audit](#) of the Government Accountability Board (GAB) found that the GAB was not suspending privileges per this statute. In their recommendations regarding the oversight of lobbying laws, the audit recommended that GAB staff “comply with s. 13.68(6), Wis. Stats., by prohibiting principals that have not filed timely semiannual expense statements from allowing lobbyists to lobby on their behalf or request that the Legislature modify this

Wisconsin Ethics Commissioners

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

Administrator

Daniel A. Carlton, Jr.

provision” (p. 64). The GAB questioned the constitutionality of the statute because of the free speech and due process clauses in the U.S. Constitution and requested an opinion from the Attorney General. That opinion has not been received to date. The Attorney General has [posted the request to solicit public comment](#) through August 21.

II. Analysis

[WIS. STAT. § 13.68\(1\)](#) requires every registered lobbying principal to file an expense report twice annually. [WIS. STAT. § 13.68\(6\)](#) states that “[i]f a principal fails to timely file a complete expense statement under this section, the [Ethics] commission may suspend the privilege of any lobbyist to lobby on behalf of the principal.” The statute further provides that upon failure to file, a written notice shall be mailed to the principal and any authorized lobbyist including information about both the suspension and the right of appeal. The statute authorizes the Ethics Commission to take this action with the word “may”; it does not require the action. This parallels the language discussing standard settlements in the administrative code but diverges from the administrative code in that no time frame to commence action is specified.

The Ethics Commission may compromise and settle any civil action or potential action brought or authorized to be brought by it which, in the opinion of the Commission, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted. [WIS. STAT. § 19.49\(1\)\(b\)](#). This, combined with the permissive rather than compulsory language in [WIS. STAT. § 13.68\(6\)](#), grants the Ethics Commission discretion whether to seek a settlement or pursue a violation in court.

Lobbying has been considered an activity covered under the right to petition the government in the First Amendment. Justice Blackmun in *Regan* wrote that “... lobbying is protected by the First Amendment...”. *Regan v. Taxation with Representation*, 461 U.S. 540 552 (1983). His source is an anti-trust case speaking generally of “two or more persons ... associating together in an attempt to persuade the legislature or the executive to take particular action”. *E. R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961). This may describe lobbying, but it is not explicitly so labelled and is not limited to that. Blackmun offers no further expansion.

To what extent is lobbying a protected right?

Lobbying, in Wisconsin law, is “the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.” [WIS. STAT. § 13.62\(10\)](#).

A person’s access to government officials is protected by the First Amendment, including the free speech and petition clauses. The term “person” includes associations, companies, corporations, partnerships, firms, and societies as well as individuals.” 1 U.S.C. § 1. Because of this, lobbying falls under the general umbrella of protected free speech. Further, the Fifth (US

Const. amend. V) and Fourteenth (US Const. amend. XIV sec. 1) Amendments guarantee due process for any federal or state governmental taking.

Questions of constitutionality are considered using the strict scrutiny standard when a fundamental constitutional right may be infringed. This standard, set forth in *US v. Carolene Products Co.*, requires that there be a compelling governmental interest, that the law is narrowly tailored to achieve that interest, and is the least restrictive alternative. 304 U.S. 144, 153 (1938).

A. Lobbying is not an unfettered right

The statutory language in [WIS. STAT. § 13.68\(6\)](#) refers to “the suspension of lobbying privileges.” In interpreting a statute, the plain language meaning of a word is preferred, unless otherwise defined. Subchapter III’s definitions do not include “privilege.” The courts are permitted to interpret statutes if there is sufficient ambiguity that the statutory language reasonably could be understood in multiple ways. *State ex rel. Kalal v. Circuit Court for Dane Cty. (In re Criminal Complaint)*, 681 N.W.2d 110 (2003). There does not appear to any ambiguity in this statute, so we are free to assume intention in the word choices. The wording of the statute signals that the legislature views lobbying as a privilege, in the plain meaning of the word. A privilege is less than a right and thus not protected as a right is.

The courts view lobbying as a right, but not an unfettered right. In *United States v. Harriss*, the Court was asked to review whether requiring lobbyists to file reports was unconstitutional because it infringes upon First Amendment freedoms to speak and to petition the government. 347 U.S. 612, 11 (1954). In *Harriss*, the district court held that the reporting requirements of the Federal Regulation of Lobbying Act (2 U.S.C. §§ 261-270) were unconstitutional. This appeal to the Supreme Court considered the definiteness of the Act. The Court declined to address the constitutional issues directly. *Harriss* found that the government has a legitimate interest in regulating lobbyists. Legislators must know whose interests they are being asked to promote. The Court held that the requirement to file quarterly reports was not unconstitutionally vague as it applied only to lobbyists as defined by the Federal Regulation of Lobbying Act and thus fulfilled the constitutional requirement of definiteness. 2 U.S.C. §§ 261-270. The government interest and narrow application meet the due process requirements.

1. Free speech

The ability to petition government for redress, i.e. through lobbying, is a form of speech protected by the First Amendment. Lobbying activities may take place in a public context or in a less public forum. Free speech in a non-public forum is subject to reasonableness. Imposing time, place, and manner restrictions on free speech in a non-public forum is permissible, provided the restrictions are without reference to the content, are narrowly tailored to serve a governmental interest, and leave open alternative channels for communication of the information. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984).

Wisconsin’s constitution speaks of free speech in broad, general terms. “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.” [WIS. CONST.](#)

[art. I, § 3](#). The state constitution treats the right to assemble and petition similarly, with a broad statement that has been more closely defined through judicial interpretation. Where the wording of the Wisconsin constitution differs from the US constitution, it does not offer greater liberties.

As a general holding, “[t]he 1st amendment does not require the state to maintain policies that allow certain associations to thrive. For the most part, the Bill of Rights enshrines negative liberties. It directs what government may not do to its citizens, rather than what it must do for them.” *Laborers Local 236, AFL-CIO v. Walker*, 749 F. 3d 628, 639 (2014).

Application of the standards set forth in *Clark* to the question of lobbyist authorization suspension indicates that the course of action is reasonable. The suspension may be applied to any lobbyist whose principal has not timely filed, and thus the statute is without reference to the content. As application is discretionary, the possibility exists that application might violate this requirement, but the statute does not do so. The suspension is narrowly tailored to serve a governmental interest, that legislators should know whose interests they are promoting. Finally, suspension of lobbying authorization leaves open alternative channels for communication with public officials; however, these channels are minimal and significantly limit the ability of a principal to influence legislative or administrative action.

Wisconsin has used the “narrowly tailored interests” standard in past decisions regarding the constitutionality of lobbying laws and restrictions. *Barker v. Wisconsin Ethics Board* (841 F. Supp. 255. 1993) established that the constitutionality of Wisconsin’s lobbying laws is to be evaluated by examining the state’s interest. Restrictions on speech and association are presumed to be unconstitutional without a compelling state interest and a narrowly tailored restriction. The holding in this case offered guidance that “[i]f the legislature continues to perceive a need to regulate the volunteer activities of lobbyists, it remains free to pass a lobby law that focuses more precisely on identified harms.” *Id.* at 259. Other Wisconsin cases challenging aspects of the lobbying statutes continue to use this standard (e.g. *Katzman v. State Ethics Bd.*, 228 Wis. 2d 282. 1999), lobbyist’s wife’s political contributions during the prohibited period were not subject to lobbyist restrictions). There are many instances of Wisconsin courts denying constitutional arguments when the state uses the least restrictive means in regulation (e.g. *State v. Ovadal*, 2000 WI App 94, law banning unauthorized sign along a highway applied to defendant’s handheld sign did not violate his first amendment rights).

To apply the *Barker* standard to the suspension of a lobbyist’s authorization, we consider whether there is a compelling state interest and a narrowly tailored restriction. The compelling interest is equally valid for state government as for federal: legislators should know whose interests they are being asked to support. The restriction is sufficiently narrowly tailored, as it only applies to registered principals who have failed to timely file SLAEs, and to registered lobbyists authorized to represent those principals. This is a clearly defined and circumscribed group. The suspension of lobbying authorization should stand up to a First Amendment test of state constitutionality as well as federal.

The state interest is the same as in *Harriss*, that legislators should know who is asking them to promote their interests. However, this statute does not appear to be narrowly tailored to achieve the government’s interest. Assuming that the government’s interest is to remove access from

principals who have not filed expense reports, the statute in its current form is not the least restrictive alternative available. The principal's registration could be suspended to achieve the desired end and not involve the lobbyist.

2. Due process

A second constitutional issue is that of due process. Due process requires that a person shall not be deprived "life, liberty, or property, without due process of law..." (U.S. Const. amend. V and U.S. Const. amend. XIV sec. 1). The Fifth Amendment provides for procedural due process in federal government actions. This affords protections including the right to notice of the action and the grounds, an opportunity for a hearing to contest the action, and a decision by a neutral party. *Goldberg v. Kelly*, 397 U.S. 254 (1970). This is often assessed using the balancing test put forth in *Mathews v. Eldridge*, balancing the private interest to be affected, the government's interest, and the chance of an erroneous taking. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Fourteenth Amendment is similar in protections and evaluation but applies to state actions. [WIS. STAT. § 13.68\(6\)](#) contains provisions for notice to both the principal and the lobbyist, and for a hearing regarding the planned action.

One component of due process is the opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394. For this to be meaningful, it "must be granted at a meaningful time and in a meaningful manner" *Armstrong v. Manzo*, 380 U.S. 545, 552. A hearing after deprivation of a right is not a meaningful hearing. The lack of a timeline for a hearing to appeal means that the authorization could be suspended before a hearing is scheduled, which may give rise to timeliness concerns. [WIS. STAT. § 13.68\(6\)](#) allows 10 days following mailing of the notice to correct the omission. The applicable hearing procedures in [WIS. STAT. § 227.42](#) specify the response time once a hearing is requested, but do not specify the timing of the request for a hearing nor require a stay of the suspension if/when a hearing is requested. Authorization could be suspended before a hearing, or even before a hearing request is received. This is more a procedural issue, in the absence of statutory specificity. Because this has never been implemented, there is no way to assess whether the actual procedures would preserve due process rights.

B. Policy: Consideration of other states' practices

There remains a question whether the Legislature should consider modifications. An examination of how other states respond can offer perspective. The table below shows what is required in other states and the District of Columbia. It includes the number of states that have lobbyist and principal registering and reporting requirements. Many more states require lobbyist registration than principal registration. Similarly, there are more states that require lobbyist reports than reports from principals. The second section contains the number of states that impose some sort of penalty for non-filing or late filing.

Activity	Number (of 51, including D.C.)
Lobbyist registration	50
Principal registration	21
Lobbyist report	46
Only lobbyist submits a report	18
Principal report	32
Only principal submits a report	5
Penalty for non-reporting (lobbyist)	42
Penalty for non-reporting (principal)	26

Penalties vary widely, though nearly all are financial. Lobbyist fines range from \$5 a day to \$25,000. Most states increase the penalty incrementally. Two states may suspend or revoke a lobbyist for non-reporting, following a hearing. Principal fines range from \$10 a day to \$25,000. One state, North Carolina, may revoke a principal’s registration for failure to file an expense report, following a certified letter and 20 days from receipt to comply. Wisconsin is the only state that suspends the lobbyist’s authorization as a consequence of the principal’s failure to report.

On its face, the currently employed process appears to be a very effective means of achieving the government’s interest and is not divergent from the practice in other states. The statutory remedy has not been employed because it has not been necessary.

III. Conclusion

[Wis. STAT. § 13.68\(6\)](#) has not been applied in the history of the Ethics Commission or its predecessors. As the statute has not been used, it has escaped review for constitutionality. There are unresolved questions of constitutionality that a court might consider if this statute were to be challenged. The specific challenges might include the extent to which suspension of lobbyist authorization satisfies the government’s interests, and whether it is the least restrictive means to do so. Because full compliance is regularly achieved without needing to resort to this action, it does not appear to be necessary or useful in gaining compliance, which is the ultimate consideration.



Wisconsin Ethics Commission

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DATE: For the Commission Meeting on December 3, 2019
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rules Update and Hearing

FOR COMMISSION ACTION

1. For ETH 1 – Comprehensive Review of ETH 1 for Consistency with Statute, following the preliminary public hearing and after consideration of any public comments, does the Commission approve of the statement of scope and direct staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse?

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](#).

At the Commission’s meeting on August 20, 2019, it deliberated regarding the comments from the Campaign Legal Center regarding this draft rule and approved a draft rule revised consistent with the discussion at that meeting. That revised draft rule was sent to the Governor’s Office for final review and approval on August 27, 2019. Our last communication with the Governor’s Office indicated that the draft rule was being reviewed by their policy team, but that they expected that review would be completed by December 3, 2019. If Commission staff has any update on the status of this rule, it will be provided verbally at the meeting. The next step after approval by the Governor’s Office would be submission of the final draft rule to the Joint Committee for Review of Administrative Rules via the Chief Clerks of each house.

II. Chapter ETH 1 – Comprehensive Review of ETH 1 for Consistency with Statute

As the Commission may recall, this scope statement was prepared as directed by the Commission at its meeting on June 18, 2019, after the Commission received feedback from the Legislative Council Rules Clearinghouse that the Commission should conduct a further comprehensive review of ETH 1 to ensure that the terms used in the rule are consistent with the terms used in Chapter 11. This broader statement of scope would

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Administrator

Daniel A. Carlton, Jr.

permit the Commission to conform the rule to the statutes in the eleven other provisions of ETH 1 that were not within the scope of the earlier rulemaking.

At the Commission's meeting on August 20, 2019, the Commission approved the draft scope statement and directed staff to submit it to the Department of Administration ("DOA") and the Governor's Office for review and approval. Staff submitted the scope statement to DOA on August 23, 2019, and it was approved by DOA and submitted to the Governor's Office on August 30, 2019. The Governor's Office approved the scope statement on October 3, 2019. Staff then submitted the statement of scope to the Legislative Reference Bureau for publication in the Administrative Register. Pursuant to [WIS. STAT. § 227.135\(3\)](#), that same day staff also submitted the scope statement to the chief clerks of each house of the Legislature, who are required to distribute the scope statement to the co-chairs of the Joint Committee for Review of Administrative Rules ("JCRAR"). The scope statement was published in the October 7, 2019 edition of the Administrative Register as SS 098-19.

Within 10 days of the publication of a statement of scope either co-chair of JCRAR may submit a written directive to the agency to hold a preliminary public hearing and comment period on a statement of scope. [WIS. STAT. § 227.136\(1\)](#). Commission staff received such a letter from Senator Nass, a co-chair of JCRAR, on October 14, 2019. At the Commission's special meeting on November 13, 2019, it approved a draft preliminary public hearing notice and directed staff to publish the notice for a preliminary public hearing on this scope statement for a hearing to be held on December 3, 2019. The hearing notice was published in the Administrative Register on November 18, 2019.

The purpose of the hearing today is to receive public comment on the proposed scope statement. As of the drafting of this memo, no public comments have been received, but if any comments have been received since the drafting of this memo, they will be included in the supplemental materials for today's meeting. If any person in attendance today is interested in providing comments on this rule, they are invited to provide those comments during the hearing and provide a written copy of their comments to staff for inclusion in the record.

See Attachment A for the draft scope statement.

III. Chapter ETH 16 – Lobbying

This rule was published on July 29, 2019, and will be effective January 1, 2020, per the text of the rule. The rule provides for identification of topics and permits the Commission to request a lobbyist's residential address. This delayed effective date will allow staff sufficient time to make changes to the Eye on Lobbying website and provide adequate training to the regulated community concerning how to report topics pursuant to the new rule prior to its implementation and enforcement. Additionally, the Commission's legislative package contains a public record exemption for a lobbyist's residential address, if they choose to provide it. Staff recommends pursuing this legislative change prior to requesting lobbyist address information.

IV. Chapter ETH 26 – Settlement Schedules

At the Commission’s meeting on June 18, 2019, it directed staff to prepare a scope statement to create new settlement schedules within WIS. ADMIN. CODE ETH 26 for unauthorized lobbying and late payment of lobbying fees as well as clarify the definition of a “day” within the rule to mean calendar days except for the schedule for late Statements of Lobbying Activity and Expenditures. The Commission approved a draft scope statement with revisions as discussed at its meeting on August 20, 2019 and directed staff to submit the revised scope statement to the Department of Administration (“DOA”) and the Governor’s Office for review and approval.

That revised scope statement was sent to DOA and the Governor’s Office for review and approval on September 26, 2019. DOA completed its review and forwarded the scope statement to the Governor’s Office on September 27, 2019. Our last communication with the Governor’s Office indicated that the scope statement was being reviewed by their policy team, but that they expected that review would be completed by December 3, 2019. If Commission staff has any update on the status of this scope statement, it will be provided verbally at the meeting. The next step after approval by the Governor’s Office would be submission of the scope statement to the Legislative Reference Bureau for publication of the scope statement in the Administrative Register.

V. Attachments

A. ETH 1 – Draft Scope Statement

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

Rule No.: ETH Ch. 1

Relating to: Campaign Finance

Rule Type: Permanent

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

In review of Clearinghouse Rule 19-035, the Legislative Council Rules Clearinghouse report recommended the Ethics Commission should review the entire chapter to ensure consistency between the rule and Chapter 11 as re-created by 2015 Wisconsin Act 117. As such a review would require a broader statement of scope than initially proposed, rather than amending the scope of CR 19-035, the Ethics Commission proposes a new rule to amend those provisions of Wis. Admin. Code ETH 1 that contain outdated language (e.g., “personal campaign committee” instead of “candidate committee”) or are otherwise not consistent with Chapter 11 as re-created by 2015 Wisconsin Act 117 (e.g., removing references to collecting the place of employment of a contributor) that were not previously identified as needing further revision. The Wisconsin Ethics Commission has tentatively identified the following provisions to be re-examined: Wis. Admin. Code ETH 1.20 (3), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), 1.85 (3), and 1.855 (3).

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

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 for consistency 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. The Ethics Commission has another rule (CR 19-035) currently in development that addresses the provisions identified by the Government Accountability Board, but this new rule would include other provisions not previously identified by the Board as inconsistent and attempt to harmonize those provisions with Chapter 11 as re-created as well.

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

The Commission has general authority for the promulgation of rules to carry out the requirements of Chapter 11.

s. 11.1304(17), Stats.:

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

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.

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

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

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

Candidates, candidate committees, political parties, legislative campaign committees, political action committees, independent expenditure committees, conduits, referendum committees, recall committees, and the general public may be affected by the proposed rule.

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

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

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

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

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



David Buerger
Staff Counsel
Wisconsin Ethics Commission

August 23, 2019
Date Submitted



Wisconsin Ethics Commission

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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Adam Harvell, Ethics Specialist

SUBJECT: Campaign Finance Auditing –
Proposed Procedures for Auditing Occupation and Name/Address
Information

FOR COMMISSION ACTION

After discussion of the campaign finance audit procedures below, does the commission wish to:

1. Update the settlement schedule to cover missing information for expenses as well as contributions?
2. Implement a contributor occupation audit that examines only single contributions in excess of \$200?
3. Implement an address information audit that examines all contributions and expenses in excess of \$20?
4. If so, what thresholds should staff use when deciding whether to contact committees about missing information?
5. Does the Commission wish to direct staff to contact committees captured in the review of calendar year 2018 reports, and advise them of compliance issues, and the potential of future enforcement?

I. Settlement Schedule Update – Expenses

The currently posted campaign finance schedule (available [here](#)) has a section on incomplete contribution information. It allows committees 30 days from staff contact to fix identified issues with only a warning, and after that, a settlement of \$100 plus 10% of the amount of the contributions with incomplete information. Since expenses are not mentioned, staff suggests updating the schedule to include them:

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Administrator

Daniel A. Carlton, Jr.

Incomplete ~~Contribution~~ Reporting of Information

Calendar Days Late:	Settlement Amount:
Up to 30 days from staff contact	Warning
31+ days from staff contact	\$100 plus 10 percent of contributions <u>transactions</u> with incomplete information

Reporting requirements are set by WIS. STAT. §§ 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904. Penalties are set by WIS. STAT. § 11.1400. Maximum penalty is \$500 per reporting violation.

For Commission Action: Does the Commission approve of expanding the scope of this provision to include expenditures as well as contributions?

For Commission Action: Does the Commission direct staff to amend the previously approved scope statement for ETH 26 to add this to the changes for that rule?

II. Background – Occupation and Name/Address Audits

The Ethics Commission is directed to examine campaign finance reports and conduct audits for violations of Chapter 11 by [WIS. STAT. § 19.49\(2g\)](#). Committees are required to make a “good faith effort” to obtain and provide all required information. *See* [WIS. STAT. § 11.0103\(1\)\(a\)](#).

Committees filing campaign finance reports are required to report the occupation information of any individual contributor whose contributions for the calendar year total more than \$200. *See* WIS. STAT. §§ [11.0204\(1\)\(a\)3.](#), [11.0304\(1\)\(a\)3.](#), [11.0404\(1\)\(a\)3.](#), [11.0504\(1\)\(a\)3.](#), [11.0604\(1\)\(a\)3.](#), [11.0704\(1\)\(b\)2.](#), [11.0804\(1\)\(a\)2.](#), [11.0904\(1\)\(a\)3.](#)

Committees filing campaign finance reports are required to itemize all receipts giving the date, full name, and street address of each person who has made a contribution. *See* WIS. STAT. §§ [11.0204\(1\)\(a\)1.](#), [11.0304\(1\)\(a\)1.](#), [11.0404\(1\)\(a\)1.](#), [11.0504\(1\)\(a\)1.](#), [11.0604\(1\)\(a\)1.](#), [11.0704\(1\)\(b\)1.](#), [11.0804\(1\)\(a\)1.](#), [11.0904\(1\)\(a\)1.](#)

In addition to itemizing the contributors, each committee is required to itemize every disbursement exceeding \$20, with the name and address of the person to whom the disbursement was made, the date and specific purpose for which the disbursement was made. *See* WIS. STAT. §§ [11.0204\(1\)\(a\)8.](#), [11.0304\(1\)\(a\)8.](#), [11.0404\(1\)\(a\)8.](#), [11.0504\(1\)\(a\)8.](#), [11.0604\(1\)\(a\)8.](#), [11.0804\(1\)\(a\)8.](#), [11.0904\(1\)\(a\)8.](#)

The Ethics Commission has not audited committees for compliance with the requirement to report occupation or name/address information since its formation. Prior to that, the

Government Accountability Board conducted audits, but under previous statutory requirements.

Staff would like direction from the Commission on whether to conduct these audits in the future and, if so, under what standards.

III. Prior Standards for Occupation Information Audit

When auditing occupation and employer information in the past, the Government Accountability Board (“G.A.B.”) considered both the overall compliance within a report and the number of instances of missing information. The G.A.B. limited the employer/occupation audit to single contributions of \$200 or more. It also established a standard that any committee that provided more than 90% of the occupation and employer information would be presumed to be in compliance with the “good faith effort” standard. There were a few large committees with hundreds of contributions missing the required occupation information, but as long as more than 90% of the contributions had the required information, the committee was presumed to have made a good faith effort overall.

Under the G.A.B., audits for contributor address information were conducted using generally the same standards. Because each address can contain multiple fields (Address Line 1, Address Line 2, City, State, and Zip), staff applied a standard of “at least street and city” meaning that if Address Line 1 and City information were provided, an entry was counted as sufficient. Contributions that did not have at least Address Line 1 and City were considered incomplete.

Missing information on expenditures occurred less frequently and was not audited on a systematic basis.

The G.A.B. limited auditing to committees with 10 or more instances of missing information. This kept the audit to a manageable size by eliminating dozens of committees with only a few potential violations. It also made application of the “good faith effort” standard more reasonable for small committees – if a committee failed to report the required information for one of two contributions over \$200, they would only have a 50% compliance rate, but they may well have made the required good faith effort to obtain that information.

Once contacted, committees were given a 30-day period to add missing information. Committees would also be able to let staff know if a mistake had been made – for example, a candidate contribution was incorrectly flagged because it was reported as from an “Individual” instead of “Self,” or the information was included in the “Comments” field but not the standard field. If the committee added missing information and was at least 90% compliant by the end of the 30-day period, no further action was taken. Committees that were less than 90% compliant at that time could still submit documentation of their

efforts to obtain the required information and ask the G.A.B. to decline to take any further action based on their efforts.

Our SharePoint settlement tracker goes back to 2014, and there were no instances of settlements being issued for failure to provide occupation or name/address information. The staff members working in campaign finance before that date do not recall any committees being issued a settlement for missing information.

IV. Application of the Proposed Standards to 2018 Calendar Year Reporting

In the August 2019 meeting, the Commission requested data on potential violations for committees based on 95% compliance – those committees that failed to report required information for 5% or more of the applicable transactions. The Commission also requested an analysis be done to examine how many of the violations were for larger amounts. The numbers below are split into three sections – one for occupation information, one for name/address information, and one for expense information.

It is difficult to anticipate how much staff time the various audit standards would take up, because the data are based on relatively small sample sizes, and results from 2018 may not be an accurate forecast of the results from 2020 or 2022. Even if the same number of committees are contacted, the amount of work can vary greatly depending on the experience of the treasurers involved, or the ability of the current treasurer to get good records from the previous one. The best course of action may be for the Commission to set a reasonable standard for compliance that will seem fair to the regulated community. Staff can then run the audits for a few election cycles and give a more accurate reporting of the staff time involved and the experience of committees involved in the audits.

Part A – Occupation Information

2018 Calendar Year - Analysis of Occupation Information					
Committees with:	Total #	Committees w/ Violations	With < 95% Compliance	<95% Compliance and 5 or More Violations	<95% Compliance and 10 or More Violations
Contributions \$200+	632	151	114	32	16
Contributions \$500+	553	104	81	12	4
Contributions \$1000+	439	51	43	7	1
When 1000+ Violations are 50% plus of All Violations					
		23	19	5	1
When 1000+ Violations are 25% plus of All Violations					
		35	26	9	3

Part B – Missing Address Information on Contributions

2018 Calendar Year - Analysis of Name/Address Information (Missing either Address Line 1 or City)				<95% Compliance and	<95% Compliance and
Committees with:	Total #	Committees w/ Violations	With < 95% Compliance	5 or More Violations	10 or More Violations
Contributions	829	255	76	44	28
Contributions \$100+	777	85	32	9	8
Contributions \$500+	660	38	18	4	2
Contributions \$1000+	566	24	13	3	1
When 1000+ Violations are 50% plus of All Violations					
		7	4	1	0
When 1000+ Violations are 25% plus of All Violations					
		16	8	4	1

Part C – Name and Address Information on Expenses

2018 Calendar Year - Analysis of Expense Information				<95% Compliance and	<95% Compliance and
Committees with:	Total #	Committees w/ Violations	With < 95% Compliance	5 or More Violations	10 or More Violations
Expenses \$20+	777	161	78	27	14
Expenses \$100+	761	115	65	17	10
Expenses \$500+	697	57	46	8	4
Expenses \$1000+	610	32	26	4	1
When 1000+ Violations are 50% plus of All Violations					
		15	7	2	1
When 1000+ Violations are 25% plus of All Violations					
		19	11	2	1



Wisconsin Ethics Commission

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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Daniel Carlton, Administrator
Julie Nischik, Office Management Specialist

SUBJECT: Request for Lobbying Program Revenue Use

FOR COMMISSION ACTION

For this request, the Commission may:

1. Approve the request and direct staff to submit to the Division of Executive Budget and Finance.
2. Reject the request.

Background

Ethics Commission staff have been working with UW-Madison's Division of Information Technology Web and Mobile Solutions (WaMS) team to modernize the lobbying website. We began working with WaMS in early 2018. The project is expected to be completed by Spring 2020. Early estimates suggested the project would cost between \$125,000 and \$150,000. As of mid-November, the Commission has paid approximately \$38,000 since the project began. At present, the Commission has \$59,700 remaining in the fiscal year 2020 operating budget for this project.

Based on the amount of work required to finish this project, staff have determined a need to request an increase in spending authority of the lobbying appropriation by approximately \$25,000 to \$50,000 in FY2020.

Process

The lobbying appropriation is funded through program revenue generated by fees for lobbying licenses. The process to request an increase in spending authority is described in [WIS. STAT. §16.515](#), Supplementation of program revenue and program revenue-service appropriations. This process allows agencies to access program revenue funds that are not currently available based on the spending authority for the fiscal year. It is not a request for additional funds from the Legislature. Rather, it is a request to access funds that the Commission currently has in program revenue but does not presently have the authority to spend. This request would increase the amount we can spend from this appropriation only during fiscal year 2020 (ending June 30, 2020).

Wisconsin Ethics Commissioners

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Administrator

Daniel A. Carlton, Jr.

The request, if approved by the Commission, will be sent to the Department of Administration's (DOA) Division of Executive Budget and Finance for review and analysis. After that is approved, the request is sent to the Secretary of DOA for approval. If it is approved, it will then be forwarded to the Joint Committee on Finance (JCF) and the Legislative Fiscal Bureau. This begins a 14-working days passive review period. If the request is approved during that time, or if the time expires without objection, it is considered approved. If a member of the JCF registers an objection, the request would be reviewed at a JCF meeting.

Request

Staff is requesting the Commission to authorize us to submit the request in an amount up to \$50,000. We do not yet know the exact amount required to complete the project. However, we will have a more precise amount in early 2020. At that time, staff will be able to determine the appropriate amount to request and submit the request. Because staff anticipates needing to submit this request before the next Commission meeting on March 3, 2020, staff is requesting the authority to submit the request at the appropriate time. If authorized by the Commission, staff will update the members on the amount of the request submitted, the status of the request, and the status of the lobbying website modernization at the Commission meeting in March.

The Administrator and Office Management Specialist are closely monitoring the current expenditures and revenues for the lobbying program. We will ensure that any requests to increase spending authority will be limited so there is sufficient funding for the full biennium and for future fiscal years.



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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Ethics Commission Staff

SUBJECT: IT Projects Update

Commission Servers

Commission staff purchased software to upgrade the servers in July. Staff have been assisting our IT Developer, Kavita Dornala, in the process of transitioning the server operating systems and updated software to testing and production environments. The production environment was tested during October, and officially cut over the weekend of October 25 – 27, 2019. The cutover to the new servers was successful, and no issues have been reported. The old servers were decommissioned in late November.

Campaign Finance

Staff are proceeding with replacement of CFIS. The Commission directed staff to begin exploring redeveloping the campaign finance system through custom development and utilization of existing software from the State of Massachusetts on August 21, 2018. The Commission also directed staff to work with the Department of Administration's Division of Enterprise Technology (DET) 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 on September 14, 2018.

Massachusetts went live with a code update in December 2018 and provided the documentation to us in April 2019. In addition to the code documentation, our contacts in Massachusetts have provided staff with testing credentials for their website, so staff is able to learn how the system works. Staff met with DET in May to discuss the code review and plan for the development of a new system based on the code we have received. During the summer, the project was not formalized by DET, and due to that was not prioritized for completion. In October, staff met with DET to discuss an estimate for the amount of time required to put the existing code into a test environment, and the Statement of Work is pending approval as of 11/19/2019. Once this Statement of Work is finalized, this will become a dedicated project, which will ensure its prioritization and completion in a timely manner. Staff will then be able to test the code in a testing environment to determine if it suits the business and technological requirements of the agency.

Lobbying

There was a slight delay with the development of the new Wisconsin Lobbying website due to both Ethics Commission server upgrades and unexpected necessary updating of the current technology that lobbying.wi.gov runs on. Staff meets via phone or in person weekly with The Web

and Mobile Solutions (WaMS) team through the Department of Information Technology (DoIT) at the University of Wisconsin-Madison. We will continue to have regular meetings with the development team as we enter the next phases of development. Wisconsin Lobbying is anticipated to be finished by mid-2020, with ample time to assemble manuals and conduct trainings.

Statements of Economic Interests System Enhancements

Kavita is adding functionality so candidates will be able to file SEIs online. Kavita was busy completing server upgrades this fall, so implementation was delayed from our initial deadline of December 2019. Most administrative functions should be available for the Spring 2020 elections, but candidates will submit paper forms as in the past. Staff will enter those SEIs and use the SEI system for tracking and email reminders. Candidates will be able to use the new system beginning in April 2020 for the Fall 2020 elections.

E-Payment for Filing Fees

At the August Commission meeting, the Commission approved a collection of convenience fees for online payments of campaign finance filing fees. After the meeting, staff met with the project manager at Wisconsin Interactive Network (WIN), which supports our current website. Based on the requirements staff described, WIN estimated it would cost the agency approximately \$22,200. Staff determined that was greater than can be included in this fiscal year budget. WIN also notified staff they are working to develop a framework that would cover many of the requirements for the agency. Staff are hopeful that this framework will be usable for our needs for online payments, and would cost significantly less. Staff expect to have more information about that option in the first half of 2020.



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DATE: For the Commission Meeting on December 3, 2019

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 of the Department of Justice appeared at the Commission meeting on March 5, 2019. At that appearance, the Department's staff advised that the Commission submit a more focused opinion request for the campaign finance exemption question. Staff has drafted changes that are included in the Commission's legislative package which should alleviate the need for the Department of Justice to issue an opinion.

The second opinion request submitted to the Department of Justice concerns whether the Commission can suspend a lobbying-related license. This opinion request is addressed in another agenda item.

Commission Administration

Fiscal Year 2019

Fiscal Year 2019 (FY19) officially closed in August 2019. The Joint Finance Committee approved the Department of Administration's plan for Discretionary Merit Compensation and Discretionary Equity or Retention Award program on September 4, 2019. A journal was entered and approved on September 25, 2019, allowing the Commission staff to officially close out the associated appropriation with a zero-dollar balance.

Purchasing

The Commission staff have purchased a few more furniture items to finish out the new space we have been occupying since December 2018. Chairs and a table were purchased for a waiting area for members of the public who visit our office. A new desktop computer was also purchased for use by the public. The previous laptop was outdated and no longer supported by Microsoft.

Training

Commission staff developed a training plan for late 2019 and in preparation for the elections in 2020. Staff developed material to present and record as short videos that are posted to our website. Topics for the videos include registration, exemption, and termination; reporting; duties and prohibitions; and

information for candidates. Staff have reached out to various clerk association throughout the state to offer training in the next year. Staff plan to coordinate training with the Elections Commission in 2020. Additional training for state candidate committees will be developed in December and January.

Campaign Finance

July Continuing 2019

The July Continuing 2019 reports were due July 15, 2019. There were 904 committees required to file. Ten committees still have not yet filed.

Future Campaign Finance Reports

The fall of an odd numbered year is typically very quiet for reporting, with the next required report being the January Continuing 2020, provided there are no special elections.

- January Continuing 2020 Due: 1/15/2020

Audits

With all reports filed for the fall 2018 election cycle, staff conducted a number of audits this fall and will present the audit findings to the Commission during closed session. Audits conducted:

- Cash balance discrepancy of more than \$100 either within a reporting period or from the end of one reporting period to the beginning of the next period;
- Contribution limits fall 2018 candidates;
- Corporate Contributions;
- Lobbyist Contributions; and
- Anonymous Contributions over \$10.

Lobbying

2019-2020 Legislative Session

As of November 20, 2019, there were 753 lobbying principals registered, 635 lobbyists licensed, and 1,594 lobbyist authorizations.

All audits for the January – June 2019 period of the 2019-2020 legislative session have been completed. All payments of lobbying related fees have been received timely since January of this year. Authorized lobbying compliance is at least 97%, Statement of Lobbying Activities and Expenditures (SLAE) compliance is at least 98%; both compliance rates are likely to rise after the Commission reviews audit findings.

Statutes require each lobbying principal to submit a SLAE twice a year. The next deadline is January 31, 2020, which will cover activity from July 1 – December 31, 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 January 31, 2020.

Code of Ethics and Financial Disclosure

Statements of Economic Interests (SEIs)

As of November 15th, there are 2,713 total filers required to file an SEI for 2019. Staff has begun contacting state agencies to ensure accuracy before sending out notices to file SEIs for 2020. Notices will go out to municipal judges and circuit court judges on the spring 2020 ballot by Monday, December 2nd. Notices to other filers will go out by early January.

There were 2,012 annual filers required to file an SEI by April 30, 2019. All SEIs were filed by June 18, 2019.

Staff continues to handle new nominees and appointees as they are reported.

Candidates for the Fall 2020 election will begin filing SEIs in early January until Thursday, June 4, 2020, at 4:30 p.m.

State of Wisconsin Investment Board Quarterly Reports

Third quarter reports were due by October 31, 2019. All were received on time and referred to the Legislative Audit Bureau. The next quarterly reports will be due by January 31st, covering October 1st through December 31st.



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DATE: For the Meeting on December 3, 2019
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: Commission Meeting Dates for Calendar Year 2021

FOR COMMISSION ACTION

The Commission may:

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

Staff examined known election dates, filing deadlines, and other important dates for calendar year 2021. 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 2021:

Commission Meeting Date	Materials Deadline ¹
February 23, 2021	February 9, 2021
May 11, 2021	April 27, 2021
July 27, 2021	July 13, 2021
October 12, 2021	September 28, 2021
December 14, 2021	November 30, 2021

The proposed schedule is constructed so that the Commission meetings will be more evenly dispersed throughout the year. Under the proposed schedule for 2021, there will not be a gap of more than 80 days between the meetings. As such, there would be no need for special teleconference meetings to reauthorize investigations.

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.



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DATE: For the Commission Meeting on December 3, 2019

TO: Members, Wisconsin Ethics Commission

FROM: Daniel A. Carlton, Jr.

SUBJECT: Future Agenda Items: Additional Rulemaking- Complaint Process and Advisory Opinion Process

FOR COMMISSION ACTION

For this agenda item, does the Commission:

1. Wish to begin the rulemaking process concerning complaint and advisory opinion procedures;
2. Direct staff to prepare scope statements for consideration at the next Commission meeting; or
3. Take other action consistent with today's discussion?

At the Commission meetings this summer, the Commission conducted a performance evaluation for the Commission Administrator. As a part of that performance evaluation, the Commission requested that the Administrator identify future goals and projects. One of the projects that was suggested was that the Commission engage in further rulemaking. Specifically, the Administrator advised that the Commission could consider adopting procedural administrative rules for certain functions. The Commission and Administrator discussed the possibility of engaging in rulemaking to adopt rules concerning the complaint process and advisory opinion process in that context.

The first step in the rulemaking process is the statement of scope pursuant to [WIS. STAT. § 227.135](#). It is important to note that, pursuant to [WIS. STAT. § 227.135\(2\)](#), no state employee or official may perform any activity in connection with the drafting of a proposed rule, except to the extent necessary to prepare the statement of scope until the statement of scope is approved by the Governor and the agency head.

As noted above, this potential rulemaking was discussed in the context of the Administrator's performance evaluation. Under Wisconsin law, performance evaluations are conducted in closed session and are generally confidential. As these topics were discussed in closed session, it is necessary to discuss whether the Commission would like to proceed with rulemaking concerning the complaint process and advisory opinion process in open session.

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Administrator

Daniel A. Carlton, Jr.

