

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Ethics Commission

101 E. Wilson Street, St. Croix Room  
Madison, Wisconsin  
Tuesday, February 25, 2020, 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 December 3, 2019 Page 3
  - 2. Open Session Minutes for Meeting on December 19, 2019 Page 9
  - 3. Open Session Minutes for Meeting on January 9, 2020 Page 11
- D. Personal Appearances
- E. Administrative Rules Update and Hearing Page 13
- F. Consideration of Guidance Document – Recall Committee  
Overview Manual Page 37
- G. Formal Advisory Opinion Drafts Memo Page 61
  - 1. 2020 ETH 01: Campaign Finance & Ethics – 50 Piece  
Rule and Mixed-Use Social Media Accounts Page 63
  - 2. 2020 ETH 02: Lobbying – Duties on Behalf of a Principal  
as Exclusive or Not Exclusive to Lobbying Page 83
  - 3. 2020 ETH 03: Campaign Finance – Application of 50-  
Piece Rule to Communications with Petitions Signatories  
and Newspaper Advertisements Page 95
- H. Review of Ethics Opinions of Previous Boards Page 105
- I. Establishment of Commission-Legislature Protocols Page **SUPP.**
- J. IT Projects Report Page 113
- K. Staff Report Page 115
- L. Consideration of Future Agenda Items
- M. Closed Session
  - 1. Requests for Advice
  - 2. Complaints and Investigations
  - 3. Personnel Matters
- N. Adjourn

Future Ethics Commission Meetings Scheduled:

- 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
- Tuesday, February 23, 2021 at 9:00 AM
- Tuesday, May 11, 2021 at 9:00 AM
- Tuesday, July 27, 2021 at 9:00 AM
- Tuesday, October 12, 2021 at 9:00 AM
- Tuesday, December 14, 2021 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

Campaign Finance | Lobbying | Ethics  
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## Wisconsin Ethics Commission

101 E. Wilson Street  
St. Croix Room  
Madison, Wisconsin  
December 3, 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, Julie Nischik, and Caroline Russell

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

Commission Chair Katie McCallum called the meeting to order at 9:02 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 August 20, 2019 Open Session Meeting**

**MOTION:** Approve the August 20, 2019 open session minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

##### **2. Minutes of November 13, 2019 Open Session Meeting**

**MOTION:** Approve the November 13, 2019 open session minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

#### **D. Personal Appearances**

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

Mike Wittenwyler appeared on behalf of Godfrey & Kahn, to discuss a closed session item.

Mr. Wittenwyler is requesting advice regarding organizations outside of Wisconsin who provide data, reports, and information. Those organizations have two concerns: avoiding making an in-kind contribution, and avoiding coordination between the organization and the candidate. There are currently no specific statutes that address this concern. Mr. Wittenwyler's firm will use this advice from the Commission to inform their clients on the appropriate steps to take to avoid these potential issues.

#### **E. Ethics Opinion Review**

Ethics Specialist Colette Greve presented the memo on page 11 of the meeting materials.

**MOTION:** Modify Eth. Bd. Op. 01-01 citations and statute references according to the changes in legislation. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried unanimously.

**MOTION:** Table Eth. Bd. Op. 03-08 for review at the March meeting. Moved by Commissioner Van Akkeren, seconded by Commissioner Packard. Motion carried unanimously.

**MOTION:** The Commission reaffirmed Eth. Bd. Ops. 92-10, 92-20, 92-28, 92-22, 94-04, 94-05, 94-06, 94-06 supplemental, 94-07, 96-09, 96-10, 96-12, 96-13, 97-06, 98-01, 98-04, 99-03, 98-01, 98-04, 00-02, 00-04, 02-01, 02-02, 02-04, 02-05, 02-07, 03-09, 03-09A, 03-17, 04-05, 05-02, 05-04, 05-05, 07-09, and 2009 GAB 04. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously.

#### **F. Attorney General Opinion Requests**

Commission Administrator Daniel Carlton presented the memo on page 25 of the meeting materials.

The Commission discussed the requests that were initially submitted by Government Accountability Board staff. Commission staff indicated there is not a current need for the opinions from the Attorney General.

**MOTION:** The Commission directed staff to communicate with the Department of Justice to indicate the opinion request is no longer needed. Moved by Commissioner Packard, seconded by Commissioner Halbrooks.

The Commission discussed the origin of the request for the opinion, which stemmed from an audit of the GAB by the Legislative Audit Bureau. The Commissioners suspected it was a misunderstanding of the language of the law.

Motion carried unanimously.

## **G. Administrative Rules Update and Hearing**

Staff Counsel David Buerger presented the memo on page 37 of the meeting materials.

Staff counsel provided an update on the status of amendments to ETH 1, ETH 16, and ETH 26.

For ETH 1, a scope statement was prepared, notice was published, and a hearing on the proposed scope statement was held. Staff had not received any comments on the rule, or any notice of appearances at the meeting.

Commission Chair McCallum called the public hearing for ETH 1 to order at 9:27 a.m. No members of the public appeared to provide comments during the public hearing. The hearing was then closed.

**MOTION:** For ETH 1, approve the statement of scope and direct staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

## **H. Campaign Finance Audit Procedure – Occupation and Address Information**

Commission staff Adam Harvell and Rich Bohringer presented the memo on page 43 of the meeting materials.

The Commissioners discussed making changes to the settlement schedule for campaign finance.

**MOTION:** The Commission approved expanding the scope statement for ETH 26 to include expenditures as well as contributions. Moved by Commissioner Davis. The motion was not initially seconded.

Commission staff asked the Commission to clarify that the motion was to expand the previously presented scope statement for ETH 26, and informed the Commission how that would affect the timeline for that rule.

Motion carried unanimously.

**MOTION:** The Commission approved the changes as discussed to the scope statement for ETH 26. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

Commission staff noted the lack of a second on the first motion in this agenda item. Commissioner McCallum seconded the motion.

The Commissioners discussed the proposed standards for the audits outlined in the memo.

**MOTION:** For the proposed occupation audit, the Commission directs staff to flag committees with less than 95% compliance who also have five or more contributions over \$200 without occupation information. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

**MOTION:** For the proposed occupation audit, the Commission directs staff to also flag all committees where contributions of \$1,000 or more that lack occupation information are 25% or more of all contributions received by the committee. Moved by Commissioner McCallum, seconded by Commissioner Strachota. Motion carried unanimously.

**MOTION:** For the proposed missing contributor address audit, the Commission directs staff to flag committees with less than 95% compliance who also have five or more contributions without the address of the contributor, and to also flag all committees where contributions of \$1,000 or more without the address of the contributor are 25% or more of all contributions received by the committee. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

**MOTION:** For the proposed audit of missing name or address information of expenditures, the Commission directs staff to flag committees with less than 95% compliance who also have five or more expenditures without the name or address of the person to whom the disbursement was made, and to also flag all committees where expenditures of \$1,000 or more without the name or address of the person to whom the disbursement was made are 25% or more of all expenditures made by the committee. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

**MOTION:** Commission staff are to notify the regulated community of the audits of occupation and name/address information. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously.

## **I. Request for Lobbying Program Revenue Use**

Commission Administrator Daniel Carlton and Office Manager Julie Nischik presented the memo on page 49 of the meeting materials.

The Commission discussed the overall project of updating the lobbying website, and the process to request additional use of program revenue. The Commission also discussed the budget implications of this request.

**MOTION:** The Commission authorized staff to submit the budget request to the Legislature up to the amount of \$50,000 and to notify the Commission when a final amount is determined. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

## **J. IT Projects Report**

Commission Administrator Daniel Carlton presented the report on page 51 of the meeting materials.

The Commission took no action.

## **K. Staff Report**

Commission Administrator Daniel Carlton presented the report on page 53 of the meeting materials.

The Commission took no action.

## **L. Proposed Meeting Dates for 2021**

Commission Administrator Daniel Carlton presented the memo on page 57 of the meeting materials.

**MOTION:** The Commission adopted the proposed meeting dates for 2021. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

## **M. Consideration of Future Agenda Items**

### **1. Complaints and Opinions Rulemaking**

Commission Administrator Daniel Carlton presented the memo on page 59 of the meeting materials.

**MOTION:** The Commission directed staff to begin the rulemaking process concerning complaints and advisory opinions. Moved by Commissioner Van Akkeren, seconded by Commissioner Strachota. Motion carried unanimously.

**MOTION:** The Commission directed staff to prepare a scope statement for review at the March 2020 meeting. Moved by Commissioner Packard, seconded by Commissioner Halbrooks. Motion carried unanimously.

The Commission and staff also discussed presenting the recall manual for review, and the Attorney General opinion request draft at the March 2020 meeting.

## **N. Closed Session**

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

1. Request for Advice
2. Complaints and Investigations
3. Personnel Matters

**O. Adjourn**

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

Meeting adjourned at 4:29 p.m.

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December 3, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

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Julie Nischik, Office Management Specialist

February 25, 2020

December 3, 2019 Wisconsin Ethics Commission meeting minutes certified by:

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Tamara Packard, Vice Chair

February 25, 2020



# Wisconsin Ethics Commission

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## Wisconsin Ethics Commission

Teleconference Meeting  
101 E. Wilson Street  
Pecatonica Room  
Madison, Wisconsin  
December 19, 2019  
11:00 a.m.

### Open Session Minutes

Present (via phone): 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, Julie Nischik, and Caroline Russell

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

Commission Chair Katie McCallum called the meeting to order at 11:01 a.m.

#### **B. Report of Appropriate Meeting Notice – Staff Counsel**

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

#### **C. Administrative Rules Update and Approval of Hearing Notice**

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

Staff Counsel also notified the Commission that the change to the scope statement for ETH 26 that was directed at the December 3, 2019 meeting was not necessary because the current administrative rule already includes that information, and the Commission can proceed with the preliminary comment period at the March 2020 meeting.

**MOTION:** To approve the hearing notice as presented. 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 Van Akkeren. Motion carried unanimously.

1. Complaints and Investigations
2. Personnel Matters

The Commissioners discussed scheduling a teleconference meeting in January 2020. The Commissioners tentatively agreed upon a date of January 6<sup>th</sup>, January 8<sup>th</sup>, or January 9<sup>th</sup>, pending availability of Commissioner Strachota.

**E. Adjourn**

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

Meeting adjourned at 1:30 p.m.

###

December 19, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

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Julie Nischik, Office Management Specialist

February 25, 2020

December 19, 2019 Wisconsin Ethics Commission meeting minutes certified by:

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Tamara Packard, Vice Chair

February 25, 2020



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## Wisconsin Ethics Commission

Teleconference Meeting  
101 E. Wilson Street  
St. Croix Room  
Madison, Wisconsin  
January 9, 2020  
3:00 p.m.

### Open Session Minutes

Present (via phone): Tamara Packard, Mac Davis, David Halbrooks, Pat Strachota, and Timothy Van Akkeren

Staff Present: Daniel Carlton, Harry Broderick, Colette Greve, Adam Harvell, Julie Nischik, and Caroline Russell

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

Commission Vice Chair Tamara Packard called the meeting to order at 3:02 p.m.

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

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

#### **C. Select New Chairperson**

Commissioner Packard notified the Commission and staff of the departure of the former chair, Katie McCallum. To follow past precedent, a new chair is selected from the same party to fill the remaining term.

**MOTION:** To nominate Commissioner Strachota to chair of the Ethics Commission. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

#### **D. Closed Session**

**MOTION:** To go into closed session. Moved by Commissioner Van Akkeren. Motion carried unanimously. Commissioner Halbrooks belatedly seconded the motion.

##### 1. Complaints and Investigations

The Commissioners discussed rescheduling the March 3, 2020 meeting, due to a scheduling conflict.

**MOTION:** Change the date of the March 3, 2020 meeting to February 25, 2020. Moved by Commissioner Van Akkeren, seconded by Commissioner Packard. Motion carried unanimously.

**E. Adjourn**

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

Meeting adjourned at 4:47 p.m.

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January 9, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

\_\_\_\_\_  
Julie Nischik, Office Management Specialist

February 25, 2020

January 9, 2020 Wisconsin Ethics Commission meeting minutes certified by:

\_\_\_\_\_  
Tamara Packard, Vice Chair

February 25, 2020



# Wisconsin Ethics Commission

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**DATE:** For the Commission Meeting on February 25, 2020  
**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, does the Commission approve of the proposed draft rule and direct staff to submit it and the associated documents to the Legislative Council Rules Clearinghouse?
2. For ETH 21 – Practice and Procedure, does the Commission direct staff to submit the proposed scope statement to the Department of Administration and the Office of the Governor for review and approval?
3. For ETH 26 – Settlement Offer Schedule, 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. The revised draft rule was approved by the Governor’s Office on November 21, 2019 and was sent to the Legislature on December 10, 2019 and subsequently referred out to the Senate Committee on Elections, Ethics, and Rural Issues, and the Assembly Committee on Campaigns and Elections. The Senate Committee on Elections, Ethics, and Rural Issues referred the rule to JCRAR on January 24, 2020. The Assembly Committee on Campaigns and Elections held a public hearing on this rule on January 30, 2020. Commission staff were present at the hearing and answered questions from the members,

*Wisconsin Ethics Commissioners*

Paul Connell | Mac Davis | David R. Halbrooks | Tamara Packard | Pat Strachota | Timothy Van Akkeren

*Administrator*

Daniel A. Carlton, Jr.

largely regarding the proposed list of items to be exempt from the attribution requirement. Assuming the Assembly oversight committee does not take any further action on the rule, their review period should expire in late February and the next step will be a review by the Joint Committee for Review of Administrative Rules.

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

As the Commission may recall, this rule was prepared as directed by the Commission at its meeting on December 3, 2019, after the Commission held a preliminary public comment period and hearing on the scope statement. No comments on the statement of scope were received during the comment period or during the hearing.

This rulemaking began after the Commission received feedback from the Legislative Council Rules Clearinghouse during an earlier rulemaking process 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. Specifically, this broader rule is to conform the administrative code to the statutes in the other provisions of ETH 1 that were not with the scope of the earlier rulemaking.

See Attachment A for the proposed draft rule and associated documents to be submitted to the Legislative Council for review.

## **III. Chapter ETH 21 – Practice and Procedure**

At its meeting on December 3, 2019, the Commission directed staff to begin the rulemaking process concerning the procedure by which the Commission receives and considers complaints and requests for advice and to prepare a scope statement for consideration at its March (now February) meeting. Staff has prepared the attached scope statement for the Commission's consideration. If the Commission agrees with the proposed scope statement, the next step would be submission of the proposed scope statement to the Department of Administration and the Office of the Governor for review and approval. Assuming approval of the proposed scope statement, staff will publish the scope statement in the Administrative Register and bring this item back to the Commission for approval and further direction at that time.

See Attachment B for the proposed scope statement.

## **IV. Chapter ETH 26 – Settlement Offer Schedule**

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 initially 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. The Governor’s Office approved the scope statement on November 21, 2019 and staff submitted the scope statement for publication in the Administrative Register. On December 4, 2019, Commission staff received a letter from Senator Steve Nass, co-chair of the Joint Committee for Review of Administrative Rules, directing the Commission to hold a preliminary public comment period and hearing prior to final approval of the scope statement. The Commission approved a notice for a hearing at its meeting on December 19, 2019. That hearing was to be held at the March 2020 meeting, which was subsequently rescheduled to today. Staff amended the hearing notice accordingly and published it in the Administrative Register on January 21, 2020.

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.

If, after consideration of any public comments, the Commission approves of the revised scope statement, the next step will be to direct staff to begin drafting the rule and associated documents for submission to the Legislative Council’s Rules Clearinghouse.

See Attachment C for the revised scope statement.

**V. Attachments**

- A. ETH 1 – Draft Rule and Associated Documents
- B. ETH 21 – Proposed Scope Statement
- C. ETH 26 – Revised Scope Statement

SS# 098-19, Wisconsin Administrative Register No. 766A1, 10/07/2019

WISCONSIN ETHICS COMMISSION  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes a rule to repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 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), and 1.85 (3), to reflect the changes of 2015 Wisconsin Act 117; related to campaign finance.

**RULE SUMMARY**

A. **Statutes interpreted:** Chapter 11, Stats.

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

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

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

s. 19.48(1), Stats.:

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

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

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

**Explanation of agency authority:** The Ethics Commission is required to promulgate rules to administer Chapter 11, Stats.

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 as required by 2015 Wisconsin Act 117. In that review, the Board noted several provisions that were inconsistent with the new law, but it did not address other statutory and

administrative references within ETH 1 that needed to be updated to harmonize the language with the newly created Chapter 11 or current administrative procedures before it was dissolved. This proposed rule would update provisions that currently contain references to the prior version of Chapter 11. The Ethics Commission previously sought to modify other inconsistent provisions in CR 19-035, which is currently pending review in the Legislature.

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), 1.20 (4), 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).

- C. **Related statute(s) or rule(s):** CR 19-035.
- D. **Plain language analysis:** The rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117.
- E. **Summary of, and comparison with, existing or proposed federal regulations:** N/A.
- F. **Comparison with similar rules in adjacent states:** N/A.
- G. **Summary of factual data and analytical methodologies:** N/A
- H. **Analysis and supporting documentation used to determine effect on small businesses:**  
N/A
- I. **Effect on small business:** N/A
- J. **Agency contact person:**  
  
David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951
- K. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 15, 2020. Written comments should be addressed by mail to: David

Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to:  
eth.rulecomments@wi.gov.

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

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

**TEXT OF RULE**

See attached.

TEXT OF RULE

SECTION 1. ETH 1.20 (3) is amended to read:

**ETH 1.20 (3)** When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor's name and address and, where applicable, the contributor's occupation ~~and the name and address of his or her principal place of employment;~~ the nature of the contribution, its actual value, and the date of the contribution.

SECTION 2. ETH 1.20 (4) is amended to read:

**ETH 1.20 (4)** When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant's name and address; the nature of the contribution and its actual value; and the date of the contribution.

SECTION 3. ETH 1.25 is amended to read:

**ETH 1.25** A loan when made by any person, ~~or committee or group (,~~ except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business), shall be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. [11.1101](#), [11.1103](#), [11.1104](#), and [11.1105](#), Stats.

SECTION 4. ETH 1.39 (1) (b) is amended to read:

**ETH 1.39 (1) (b)** "State campaign committee" means the ~~personal campaign candidate~~ candidate committee of a candidate for state or local office.

SECTION 5. ETH 1.56 (2) is amended to read:

**ETH 1.56 (2)** When a registrant sells an item which it has purchased for resale to raise funds ~~for political purposes~~, the entire amount of the proceeds of the sale shall be reported in the registrant's campaign finance report as a contribution from the purchaser.

SECTION 6. ETH 1.60 (1) (a) is amended to read:

**ETH 1.60 (1) (a)** Expenditures for consulting services made by a ~~candidate's~~ candidate committee, political action committee, legislative campaign committee, or political party ~~committee~~ on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided

in par. (c). This rule shall not apply to independent expenditures made under ss. [11.0505](#), [11.0605](#), and [11.1001](#), Stats.

SECTION 7. ETH 1.60 (1) (c) is amended to read:

**ETH 1.60 (1) (c)** Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political ~~party parties or legislative campaign~~ committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

SECTION 8. ETH 1.60 (2) is amended to read:

**ETH 1.60 (2)** If a candidate, ~~candidate's candidate~~ committee, political action committee, ~~or~~ political party, or legislative campaign committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in ss. [11.1101](#), [11.1103](#), [11.1104](#), and [11.1105](#), Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

SECTION 9. ETH 1.70 (2) is amended to read:

**ETH 1.70 (2)** If the candidate or elected official is reimbursed by another individual, ~~personal campaign~~ candidate committee, political action committee, political party, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

SECTION 10. ETH 1.70 (3) is amended to read:

**ETH 1.70 (3)** If the candidate or elected official is an officer or employee of a political party or legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the political party or legislative campaign committee.

SECTION 11. ETH 1.85 is amended to read:

**ETH 1.85 Conduit registration and reporting requirements.** A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor, ~~and~~ the date and amount of each contribution, and the occupation, if any, of each contributor whose cumulative contributions to the transferee for the calendar year are in excess of \$200.

SECTION 12. ETH 1.855 (3) is repealed.

SECTION 13. EFFECTIVE DATE.

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

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

---

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

---

3. Subject

Repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 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), and 1.85 (3), to reflect the changes of 2015 Wisconsin Act 117; related to campaign finance.

---

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

---

6. Fiscal Effect of Implementing the Rule

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

---

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

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

---

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

Yes       No

---

9. Policy Problem Addressed by the Rule

The rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117.

---

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

N/A

---

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

N/A

---

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

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

---

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

Promulgating the rule would remove outdated portions of the administrative code and adopt consistent language between Wis. Admin. Code Chapter ETH 1 and Chapter 11, Stats. The alternative to implementing the rule would be to continue leave the code and statute mismatched and requiring the regulated community and the Commission to attempt to translate between the two sets of terminology. This could continue to promote confusion among the regulated community and may lead to non-compliance with Chapter 11, Stats.

---

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117.

---

15. Compare With Approaches Being Used by Federal Government

N/A.

---

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

---

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

---

17. Contact Name  
David P. Buerger

---

18. Contact Phone Number  
(608) 267-0951

---

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

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

---

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

---

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

---

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

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

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

---

5. Describe the Rule's Enforcement Provisions

---

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

- Yes    No
-

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

On February 25, 2020, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

### **Analysis**

The proposed rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117.

### **Statement of Scope**

The scope statement for this rule, SS 098-19, was approved by the Governor on October 3, 2019, published in Register No. 766A1, on October 7, 2019, was subject to a preliminary public hearing and public comment period as directed by a co-chair of JCRAR, and was approved by the Ethics Commission on December 3, 2019, subsequent to the preliminary public hearing held that same day.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on June 16, 2020.

### **Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Ethics Commission

### **Agency Contact Person**

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

## **Notice of Hearing**

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 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), and 1.85 (3), to reflect the changes of 2015 Wisconsin Act 117; related to campaign finance; at the time and place shown below.

### **Hearing Information**

Date: June 16, 2020

Time: 9:00 A.M.

Location: 101 East Wilson Street, St. Croix Room, Madison, WI 53703

### **Appearances at the Hearing and Submittal of Written Comments**

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

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to [eth.rulecomments@wi.gov](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than June 15, 2020 to be included in the record of rulemaking proceedings.

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

### **Initial Regulatory Flexibility Analysis**

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

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

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

**Relating to:** Practice and Procedure

**Rule Type:** Permanent

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

The Commission proposes a rule to clarify the procedure by which an individual may make a request for advice under Wis. Stat. § 19.46(2) and the procedure of the Commission in responding to those requests. The Commission also proposes to further clarify the complaint process of Wis. Stat. § 19.49(2).

**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 Commission has two current policies relevant to the rule:

Delegation of Authority for Informal Advisory Opinions

Pursuant to Wis. Stat. § 19.46(2), the Commission may authorize the Commission's administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the Commission, subject to such limitations as the Commission deems appropriate.

The Commission originally adopted a policy to delegate this authority on March 7, 2017 and has readopted this policy each year since. The delegation of authority is subject to the following conditions:

1. The request for an informal opinion must be received in writing (e.g., email, or a typed or written letter).
2. The informal opinion must be issued in writing (e.g., email, or a typed or written letter).
3. Every informal opinion issued shall be consistent with all applicable formal advisory opinions issued by the Commission, state or other law, and case law as required by Wis. Stat. § 19.46(2)(b)1; as well as United States and Wisconsin constitutional law.
4. The Commission Administrator, or the Staff Counsel upon delegation by the Administrator, may issue an informal opinion consistent with the policy adopted by the Commission.

Informal opinions issued by the administrator subject to the above conditions provide the same legal protections as an opinion issued by the Commission. Pursuant to Wis. Stat. § 19.46(2)(a)4., at each regular meeting of the commission, the administrator is required to review informal advisory opinions requested of and issued by the administrator that relate to recurring issues or issues of first impression for which no formal advisory opinion has been issued. In practice, the administrator regularly reports all informal advisory opinions issued on behalf of the Commission. The Commission may choose to issue a formal advisory opinion adopting or modifying the informal advisory opinion. If the Commission disagrees with a formal or informal advisory opinion, the commission may withdraw the opinion, issue a revised formal or informal advisory opinion, or request an opinion from the attorney general.

The proposed policy would seek to provide additional information as to the processes by which a requestor may seek an informal opinion from the administrator, an informal opinion of the Commission, or a formal opinion of the Commission. It would also delineate the process for requesting a public or private hearing on a formal opinion. This policy would assist requestors by enabling them to more easily request the particular type of advice sought and clarify expectations as to the type of response to be received as well as the process to be used.

The alternative to adopting this policy would be for Commission staff to continue to work with requestors to individually to review the request to identify the type of advice requested and attempt to meet each requestor's expectations as to the response to be received and the process to be used.

#### Complaints and Investigations Procedures

The complaint process is largely codified in Wis. Stat. § 19.49(2); however, the Commission has adopted a policy to further describe its internal processes for handling complaints including initial review of the complaint by the administrator and staff counsel, tracking mechanisms, notice procedures, and the process for subsequent review by the Commission.

The proposed policy would further describe the required elements of a sworn complaint and the conditions under which Commission staff will reject a submitted complaint as insufficient to proceed, the process through which a complaint is considered by the Commission, and how the Commission would determine whether a complaint is frivolous.

The alternative to adopting this policy would be for Commission staff to continue to exercise their independent judgment as to whether a complaint is sufficient to proceed, and for the Commission to continue its existing practices for considering complaints and making determinations as to whether a complaint is frivolous.

**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 Chapters 11, 13, and 19.

Wis. Stat. § 11.1304(17):

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

Wis. Stat. § 19.48(1):

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

Wis. Stat. § 227.11(2)(a):

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

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

The Commission estimates that it will use approximately 0.05 FTE staff to 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, political parties, and other registered committees; lobbyists and lobbying principals; state and local public officials; and the general public may be affected by the proposed rule.

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

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

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

The Wisconsin Ethics Commission anticipates the rule having no economic impact beyond the specified amounts proposed to be forfeited in the event of a violation. The settlement schedule is designed to deprive the alleged violator of any benefit and serve as a deterrent to violations. This proposed rule includes no significant economic impact on small businesses.

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

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Daniel A. Carlton, Jr.  
Administrator  
Wisconsin Ethics Commission

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Date Submitted

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

**Rule No.:** ETH Ch. 26

**Relating to:** Ethics Commission Settlement Schedule

**Rule Type:** Permanent

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

The Commission proposes a rule to amend Wis. Admin. Code ETH 26 to further its compliance with the requirement of Wis. Stat. § 19.49(2)(b)10. This statute requires the Commission to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute. The Commission proposes to amend its existing settlement schedules for late continuing reports and late September reports, and create new settlement schedules for late special post-election reports, late payment of lobbying fees, and lobbying prior to authorization. The Commission also proposes to amend its rule throughout to clarify the word “days” as either calendar or business days.

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

The Ethics Commission began a review of its settlement schedules in June 2019. During that review process, the Commission considered the type of violations, the number of each type of violation, and a breakdown of when registrants ultimately complied.

Late Continuing Reports

Currently, the standard settlement schedule for late continuing reports provides that a registrant that files a continuing report within the first 30 days after the due date will receive a warning, regardless of whether the registrant has previously filed a continuing report late. After the 30 day period, a monetary component is included in the standard settlement schedule. This monetary component increases depending on the amount of time that the report is late and whether there was a prior late-filed continuing report by the registrant. Over the past three years, between 70-85% of the reports that were filed late were filed in the first 30-days following the deadline. The Commission seeks to make two changes to the standard settlement schedule for late continuing reports.

First, if a registrant has previously filed a campaign finance report late, the amended standard settlement schedule will provide for a monetary component beginning the day

after the deadline. While overall compliance has improved since 2016, some registrants are beginning to treat the 30-day period following the deadline as a grace period. This change will result in better compliance with the statutory deadline.

Second, the Commission is seeking to reduce the amounts provided for in the existing portions of the standard settlement schedule that contain a monetary component. The Commission has found that most of the late reports are filed in the first 30-days following the deadline. The Commission has also found that, when a registrant is late in filing its continuing report, factors other than the amount that may be sought in settlement appear to motivate registrants to get their reports filed.

### Late September Reports

Under the current settlement schedule, September reports are treated similarly to continuing reports. However, because the September report is only due in even-numbered years to cover the window between the Pre-primary and Pre-election reports, it is more akin to those election-specific reports than the semi-annual January and July Continuing reports. It is also more time sensitive. For example, in 2020, the September report is due on September 22<sup>nd</sup> and the Pre-election report is due on October 26<sup>th</sup>. If a registrant filed its September report on October 21<sup>st</sup>, the current settlement schedule would only result in a warning and filing the September report the day after the general election would only reach the second tier of the schedule. The September report is intended to serve as an additional campaign finance report to be filed between the Pre-primary and Pre-election reports. As such, the Commission seeks to amend the rule to treat late September reports similarly to late Pre-primary and Pre-election reports.

### Late Special Post-election Reports

Special post-election reports cover the period beginning 14 days prior to a special election and ending 22 days after a special election. These reports are due 45 days after the special election if no continuing report is due in that same window. Under the current settlement schedule post-election reports are treated similarly to Pre-primary and Pre-election reports. However, as the report is filed significantly after the election, there is not the same urgency to these reports. The Commission proposes to create a new schedule for Special post-election reports that would more accurately reflect the amounts appropriate to a late filing of this type.

### Late Payment of Lobbying Fees

The Ethics Commission currently does not have a settlement schedule established in administrative code for the late payment of lobbying fees. The Commission believes that a rule will provide notice to the regulated community and will ensure consistency when considering these matters. Therefore, the Commission would like to adopt a rule for the late payment of fees by lobbyists and principals that is similar to the rule for late payment of filing fees by campaign finance registrants in Wis. Admin. Code ETH 26.02(3).

## Lobbying Prior to Authorization

The Ethics Commission currently does not have a settlement schedule established in administrative code for instances of lobbying prior to authorization. In the Commission's experience, instances of lobbying prior to authorization are commonly caused by a misunderstanding of the Commission's lobbying registration process or a miscommunication between a lobbyist and a principal. Such matters are often amenable to quick settlement. Providing a clear and understandable settlement schedule for lobbying prior to authorization is expected to promote compliance among the regulated community with the Commission's lobbyist and lobbying principal registration processes.

## Definition of "Days"

Finally, the Commission proposes to clarify the use of the word "days" throughout the rule as either calendar or business days. It is not clear whether the word "days" means calendar days or business days. This has created some confusion among the regulated communities as to how to count days under the rule. By amending the rule to specify either calendar or business days in each schedule, the Commission would provide certainty to the regulated communities as to when they must act and what amount the Commission may seek for a given violation.

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

The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to Wis. Stat. § 19.49(2)(b)10.

**10.** The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

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

Wis. Stat. § 11.1304(17):

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

Wis. Stat. § 19.48(1):

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

Wis. Stat. § 227.11(2)(a):

**227.11 Extent to which chapter confers rule-making authority.**

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

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

The Commission estimates that it will use approximately 0.05 FTE staff to 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, political parties, and other registered committees; lobbyists and lobbying principals; state public officials; and the general public may be affected by the proposed rule.

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

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

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

The Wisconsin Ethics Commission anticipates the rule having no economic impact beyond the specified amounts proposed to be forfeited in the event of a violation. The settlement schedule is designed to deprive the alleged violator of any benefit and serve as a deterrent to violations. This proposed rule includes no significant economic impact on small businesses.

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



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Daniel A. Carlton, Jr.  
Administrator  
Wisconsin Ethics Commission

September 26, 2019

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Date Submitted





# Wisconsin Ethics Commission

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

**DATE:** For the Commission Meeting on February 25, 2020

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Consideration of Guidance Document

### FOR COMMISSION ACTION

1. Does the Commission choose to adopt, modify, or direct staff to take other action with regard to the CF Overview for Recall Committees?

### Background

2017 Act 369 imposed a new process for state agencies to follow before adopting guidance documents. First, an agency must submit to the Legislative Reference Bureau a proposed guidance document with a public notice specifying the place where public comments may be submitted and the deadline for receiving those comments for publication in the Administrative Register. An agency is required to provide for a period of public comment of at least 21 days unless the Governor approves a shorter public comment period. An agency is required to retain all written comments submitted during the public comment period and is required to consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take other action. If adopted, the agency is required to post each guidance document on its website and is further required to permit continuing public comment on the guidance document. Each guidance document is also required to bear the signature of the secretary or head of the agency along with a certification.

The Ethics Commission has submitted one additional guidance document for publication since July of 2019. Below are the details for the CF Overview – Recall Committees. No public comment was received regarding the CF Overview – Recall Committees.

| Guidance Document Title         | Publication Date  | Register No. | Comment Deadline |
|---------------------------------|-------------------|--------------|------------------|
| CF Overview – Recall Committees | November 11, 2019 | 767A2        | December 2, 2019 |

### Attachments

- A. CF Overview – Recall Committees

*Wisconsin Ethics Commissioners*

Paul Connell | Mac Davis | David R. Halbrooks | Tamara Packard | Pat Strachota | Timothy Van Akkeren

*Administrator*

Daniel A. Carlton, Jr.



**Wisconsin Ethics Commission**

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<https://ethics.wi.gov>

# CAMPAIGN FINANCE OVERVIEW

## Recall Committees

Published: October 2019

There has been no change in campaign finance statutes since March of 2016.

This manual has been updated to include specific statutory citations and clarify basic reporting requirements for Recall committees.

Provided pursuant to [WIS. STAT. § 11.1304\(3\)](#) and in compliance with [WIS. STAT. § 227.112](#).

|  |    |
|--|----|
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## **BACKGROUND AND REGISTRATION REQUIREMENTS**

The recall process is governed by statutes in Chapter 9, administered by the Wisconsin Elections Commission, and Chapter 11, administered by the Wisconsin Ethics Commission. The Elections Commission oversees the recall petition process and the process for calling a recall election. The Ethics Commission oversees committee registration and campaign finance reporting for recall committees.

A recall committee is a committee formed for the purpose of supporting or opposing the recall of either a state or local incumbent elected official. [WIS. STAT. § 11.0101\(27\)](#).

Local recall committees should consult the Elections Commission Manual: [Recall of Local Elected Officials](#).

Recall committees for county, state, and federal offices should consult the Elections Commission Manual: [Recall of Congressional, County and State Officials](#).

### **When Recall Committees are Required to Register**

A new recall committee must register within 10 days of passing the threshold of \$2,000 of activity in a calendar year. [WIS. STAT. § 11.0902](#). A recall committee cannot collect signatures before it is registered. The committee should also keep in mind that the recall petition signatures must be collected and submitted to the proper filing officer within 60 days of registration. If the committee is recalling a city, village, town, school district, or town sanitary district official, a statement of the reason for the recall must be attached. [WIS. STAT. § 9.10\(2\)\(d\)](#). See the Intent to Circulate Recall Petition form [here](#).

All recall committees must register with the same filing officer as a candidate for the position that is being recalled. (State, County, Municipal or School District). [WIS. STAT. § 11.0102\(1\)\(e\)](#). State-level recall committees must register online at <http://cfis.wi.gov>. Recall committees at the county, municipal, or school district level will register with a [local campaign finance registration statement](#). When completed, to activate your registration, you must submit a signed copy to the requisite filing officer in person, or by email, fax or US mail. The Wisconsin Elections Commission maintains a directory of county and municipal clerks here: <https://elections.wi.gov/clerks/directory>.

A recall committee may receive and disburse campaign funds. The committee's financial activities must be reported to the filing officer on campaign finance reports (state-level committees will use CFIS to file a [ETHCF-2S, 2SE, 2SU or 2a](#), and local committees will file a [2L/LE \(local\) or 2a](#)), *unless the committee has claimed an exemption from filing finance reports*. These reports will disclose information on the receipts, expenditures, incurred obligations and loans of the committee. [WIS. STAT. § 11.0904](#).

## **Completing a Registration Statement**

Several items of information are required on a recall committee's registration statement (CF-1). When any of this information changes, an amendment to the registration statement must be filed in a timely manner (**within 10 days**). [WIS. STAT. § 11.0903\(3\)](#).

### **Required Registration Information**

- Along with the name and contact information, new committees must also supply a four-digit PIN number. The PIN number will be used when submitting any reports or changing registration information in the CFIS website. (This is required for state-level committees only).
- All committees are required to have an active treasurer. Please make sure the email address for the treasurer is kept up to date, so the committee receives notices of filing deadlines and other communications. Failure to keep this information current may result in the committee being penalized for failure to file necessary reports. [WIS. STAT. § 11.0903\(1\)\(b\)](#).
- Additional contacts are not required. However, the Ethics Commission recommends having more than one contact person for the committee.
- Every recall committee must have a campaign account and provide the name and address of the financial institution. [WIS. STAT. § 11.0903\(1\)\(c\)](#). To open the campaign account, it may be necessary to complete a request for Employer Identification Number (EIN) using form SS4. This form should be available from your financial institution or from an IRS office or website <https://www.irs.gov/pub/irs-pdf/fss4.pdf>.
- After registration, every state-level recall committee will be issued an Ethics Committee ID#. This ID# also serves as the 'username' to login to the CFIS website. We recommend that this ID#, along with the full committee name, appear on all committee checks.

### **Certification**

The committee treasurer must sign the registration statement certifying that the information is true, correct, and complete. [WIS. STAT. § 11.0903\(2\)](#). When the filing officer receives the signed statement, they will activate the committee, and at the state level, the CFIS website will send the Ethics Committee ID# (which is also the username) and a password to the email address(es) on file.

### **Amending a Registration Statement**

When any of the information reported on the registration statement changes, the statement must be amended by filing a new registration statement within 10 days. The treasurer should file an amended registration statement indicating that it is an amendment. [WIS. STAT. § 11.0903\(3\)](#).

## **Changing Roles of the Recall Committee after a Recall Election is Called**

Once the recall election has been ordered, the recall committee does not automatically terminate. The recall committee may still accept contributions and make disbursements much like a Political Action Committee (PAC). It has the same contribution limits, and it may contribute directly to candidates or make independent expenditures like a PAC. It has the same source restrictions as a PAC – it cannot take money from corporations, associations, tribes or unions. [WIS. STAT. § 11.1112](#). Unlike PACs, which all register at the state level, a local recall committee remains registered with the filing officer for the local office up for recall.

Because of the potential for individuals involved with a recall committee to also simultaneously become candidates or candidate’s agents, recall committees and the individuals associated with them must be mindful of the provisions concerning “coordinated contributions.” For more information on “coordinated contributions,” see the section on [Coordination with Candidate Committees](#).

Alternatively, some recall committees may wish to terminate but individuals that were a part of the recall committee might still want to remain politically active. Depending on whether the individuals would like to make contributions to candidates or simply to make independent expenditures, those individuals can form either a PAC or an IEC. To determine which committee is appropriate for them and to learn more about those committees, those associated with the recall committee should consult the PAC manual: [PAC Committee Overview](#) or the IEC manual: [IEC Committee Overview](#). All PACs and IECs register with the Wisconsin Ethics Commission through the CFIS website.

A recall committee that wishes to terminate and re-register as a PAC or IEC, or cease activity and close their bank account, should see the [Termination](#) section of this manual.

## **FILING FEES (STATE-LEVEL COMMITTEES ONLY)**

Every recall committee registered with the state whose disbursements exceed a total of \$2,500 in any calendar year must pay an annual filing fee of \$100. The payment is made to the Ethics Commission and is due no later than January 15<sup>th</sup> following the calendar year for which the fee was required. [WIS. STAT. § 11.0102\(2\)](#).

If a committee becomes subject to registration during the year, it must pay the fee when it registers. [WIS. STAT. § 11.0102\(2\)\(b\)](#). If a committee terminates during a year, and spends more than \$2,500 in that year, the registrant must pay the \$100 filing fee with its termination request. [WIS. STAT. § 11.0105\(2\)](#).

Any committee required to pay the filing fee who fails to do so within the time prescribed will be referred to the Commission for further action. The statutes provide for a forfeiture of \$500 plus three times the filing fee which is \$300. [WIS. STAT. § 11.1400\(4\)](#).

## **EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS**

### **Eligibility**

Committees may amend their registration and claim exemption from filing campaign finance reports if the committee anticipates that it will not receive or spend funds in an aggregate amount exceeding \$2,000 in a calendar year. [WIS. STAT. § 11.0104](#). Recall committees will typically only be exempt if the committee was active in one calendar year, anticipates little financial activity in the next calendar year, and wishes to remain registered.

An indication of limited activity (exemption) under this section is effective only for the calendar year in which it is granted. [WIS. STAT. § 11.0104\(2\)](#). The Ethics Commission is seeking guidance from the Attorney General's office on interpreting and enforcing this statute. Pending that guidance or legislative change, the Ethics Commission is not actively enforcing this requirement.

### **Financial Records During Exemption**

When a committee is exempt, it is not required to file any campaign finance reports. However, the treasurer is still required to keep financial records of all contributions to the committee and of all expenditures from the date of registration until three years from the date of the election in which the recall committee participates. [WIS. STAT. § 11.0901\(4\)](#).

### **Revoking Exemption**

If, at a later date, the committee expects to exceed the \$2,000 limit on contributions, disbursements, or obligations, the committee must amend its campaign registration statement by checking the box: "This registrant is no longer eligible to claim exemption," on the registration statement. An amendment to the registration statement must be filed with the Wisconsin Ethics Commission or other filing officer within **ten days**. [WIS. STAT. § 11.0903\(3\)](#). The committee is then required to file campaign finance reports beginning with the next regular report due after exemption is revoked, or after the committee has exceeded \$2,000 in aggregate contributions, disbursements, or obligations, whichever is earlier. [WIS. STAT. § 11.0104\(3\)](#).

## CONTRIBUTION LIMITS (FROM RECALL COMMITTEES TO CANDIDATES)

Contribution limitations apply cumulatively to the entire primary and election campaign in which the candidate participates, whether or not there is a contested primary election. Recall committees fall under the “Other Persons” category for the purposes of contribution limits.

| OFFICE                               | RECALL COMMITTEE CONTRIBUTORS   |
|--------------------------------------|---|
| GOVERNOR                             | \$86,000  |
| LIEUTENANT GOVERNOR                  | \$26,000  |
| SECRETARY OF STATE                   | \$18,000  |
| STATE TREASURER                      | \$18,000  |
| ATTORNEY GENERAL                     | \$44,000  |
| SUPERINTENDENT OF PUBLIC INSTRUCTION | \$18,000  |
| SUPREME COURT                        | \$18,000  |
| STATE SENATOR                        | \$2,000   |
| ASSEMBLY REPRESENTATIVE              | \$1,000   |
| APPEALS JUDGE – POPULOUS DISTRICTS   | \$6,000   |
| APPEAL JUDGE – OTHER DISTRICTS       | \$5,000   |
| CIRCUIT JUDGE – POPULOUS AREA        | \$6,000   |
| DISTRICT ATTORNEY – POPULOUS AREA    | \$6,000   |
| CIRCUIT JUDGE – OTHER AREA           | \$2,000   |
| DISTRICT ATTORNEY – OTHER AREA       | \$2,000   |
| LOCAL OFFICES                        | GREATER OF \$400 OR 2 CENTS TIMES THE POPULATION; NOT MORE THAN \$5,000 |

[WIS. STAT. § 11.1101\(4\).](#)

### Populous Areas:

- Appeals Judge – District contains a county having a population of more than 750,000.
- Circuit Judge – Circuits having a population of more than 300,000.
- District Attorney – Prosecutorial units having a population more than 300,000.

### Local Offices:

- Districts with 20,000 or fewer population have a limit of \$400. Districts with 250,000 or greater population have a limit of \$5,000. Other districts need to be calculated.
- Population is determined by the last decennial census for that district. Contact the local filing officer for that office (county, municipal, or school district clerk) for exact numbers.

The contribution limits established by state statute prescribe the maximum amount of all contributions (cash, non-commercial loans, and in-kind contributions combined) that an individual or committee can give or receive over a campaign period.

If the recall committee spends money on express advocacy, which urges people to vote for or against a certain candidate, and coordinates the expense with the candidate committee, that counts as an in-kind contribution, and would count towards contribution limits. See the [Coordination with Candidate Committees](#) section below.

### Applicable Periods for Contribution Limits

For purposes of calculating contribution limits, a new candidate's campaign begins on the date a new candidate is required to file a registration statement, i.e., the date she or he becomes a candidate. [WIS. STAT. § 11.1103\(2\)](#). The campaign period includes both the primary and general election. The campaign period ends the day before the winning candidate begins his or her new term of office. *Id.*

For an incumbent candidate, the new campaign period begins on the day the candidate assumes office. [WIS. STAT. § 11.1103\(1\)](#). The campaign period runs through the primary and general election for that office and lasts until the day before the winning candidate begins his or her new term of office. *Id.*

For more information on contribution limits, go to the Ethics Commission's Contributions Limits page: <https://ethics.wi.gov/Pages/CampaignFinance/ContributionLimits.aspx>.

### Exceptions to Contribution Limits

The following contributions may be made in unlimited amounts:

Contributions (to a candidate committee) used to pay legal fees and other expenses incurred in connection with or in response to circulating, offering to file, or filing a petition to recall an office holder prior to the time that a recall primary or election is ordered, or after that time if incurred to contest or defend the order. [WIS. STAT. § 11.1104\(10\)](#).

## **CONTRIBUTIONS AND DISBURSEMENTS**

Committees are required to make full reports of all contributions, disbursements, and obligations received, made and incurred by the committee. Each report must include information covering the period since the last date covered on the previous report. [WIS. STAT. § 11.0904\(1\)\(a\)](#).

“Contribution” means any of the following:

1. A gift, subscription, loan, advance, or transfer of money to a committee.
2. With the committee's consent under [WIS. STAT. § 11.1109](#), a transfer of tangible personal property or services to a committee, valued as provided under [WIS. STAT. § 11.1105](#).
3. A transfer of funds between committees.
4. The purchase of a ticket for a fundraising event for a committee regardless of whether the ticket is used to attend the event.

[WIS. STAT. § 11.0101\(8\)\(a\)](#).

“Contribution” does not include any of the following:

1. Services that an individual provides to a committee, if the individual is not specifically compensated for providing the services to the committee.
2. Any unreimbursed travel expenses that an individual incurs to volunteer his or her personal services to a committee.
3. The costs of preparing and transmitting personal correspondence.
4. Interest earned on an interest-bearing account.
5. Rebates or awards earned in connection with the use of a debit or credit card.
6. A loan from a commercial lending institution that the institution makes in its ordinary course of business.
7. The reuse of surplus materials or the use of unused surplus materials acquired in connection with a previous campaign for or against the same candidate, political party, or recall if the materials were previously reported as a contribution.
8. The cost of invitations, food, and beverages in connection with an event held in a private residence on behalf of a candidate committee.
9. Any communication that does not expressly advocate for the election or defeat of a clearly identified candidate.
10. A communication made exclusively between an organization and its members. In this subdivision, a member of an organization means a shareholder, employee, or officer of the organization, or an individual who has affirmatively manifested an interest in joining, supporting, or aiding the organization.
11. Any cost incurred to conduct Internet activity by an individual acting in his or her own behalf, or acting in behalf of another person if the individual is not compensated specifically for those services, including the cost or value of any computers, software, Internet domain names, Internet service providers, and any other technology that is used to provide access to or use of the Internet, but not including professional video production services purchased by the individual.
12. Any news story, commentary, or editorial by a broadcasting stations, cable television operator, producer, or programmer, Internet site, or newspaper or other periodical publication, including

an Internet or other electronic publication unless a committee owns the medium in which the news story, commentary, or editorial appears.

[WIS. STAT. § 11.0101\(8\)\(b\).](#)

### **Prohibited Contributions (from others to the recall committee)**

Certain contributions are prohibited by Wisconsin law. A recall committee may not accept the following types of contributions:

1. Anonymous contributions of more than \$10. [WIS. STAT. § 11.1108](#);
2. Contributions in cash of more than \$100. [WIS. STAT. § 11.1107](#);
3. Contributions given in the name of someone other than the contributor. [WIS. STAT. § 11.1204\(1\)](#);
4. Contributions from corporations, associations, labor organizations, or tribes. [WIS. STAT. § 11.1112](#);
5. Contributions from foreign nationals. [WIS. STAT. §§ 11.1208\(4\)](#).

### **Contributions Unlimited**

Unless the contribution is prohibited in the section above, there are no limits on contributions to a recall committee. [WIS. STAT. § 11.1104\(11\)](#).

### **Required Information for Contributions**

1. The date, full name, and street address of each person who has made a contribution to the committee, together with the amount of the contribution. [WIS. STAT. § 11.0904\(1\)\(a\)1](#).
2. The occupation, if any, of each individual contributor whose cumulative contributions to the committee for the calendar year are in excess of \$200. [WIS. STAT. § 11.0904\(1\)\(a\)3](#).
3. An itemized statement of contributions made anonymously to the committee. If the contribution exceeds \$10, the committee shall specify whether the committee donated the contribution to the common school fund or to a charitable organization and shall include the full name and mailing address of the donee. [WIS. STAT. § 11.0904\(1\)\(a\)4](#).
4. A statement of totals during the reporting period of contributions received and contributions donated. [WIS. STAT. § 11.0904\(1\)\(a\)5](#).

### **Contributions and Other Income from Businesses**

1. Corporations **may not contribute** to recall committees in the State of Wisconsin. [WIS. STAT. § 11.1112](#).
2. Sole proprietorships may contribute. The contribution must be reported under the name of the individual owner. [WIS. STAT. § 11.1113\(1\)](#).
3. Partnerships may contribute. The contribution must be reported under the names of the individual owners. The partnership may agree beforehand on how to allocate a portion of the contribution to each partner. If the partnership does not inform the committee how the contribution should be allocated between the partners, then the contribution should be divided up according to each partner's share of the partnership's profits. [WIS. STAT. § 11.1113\(2\)](#).
4. LLCs taxed as a sole proprietorship or partnership may contribute. The contribution must be reported under the name(s) of the individual owner(s). If there is more than one owner,

contributions should be allocated as described in the partnership section above. [WIS. STAT. § 11.1113\(3\)](#).

Occasionally, a committee may receive other income, like interest on a savings or checking account, or a refund of a security deposit, from a business. This other income is not a contribution and may be accepted from any type of business. [WIS. STAT. § 11.0101\(8\)\(b\)](#). The income should be reported on Schedule 1-C (Other Income), rather than Schedule 1-A, where contributions are reported. [WIS. STAT. § 11.0904\(1\)\(a\)10](#).

### **In-Kind Contributions**

An in-kind contribution is any good, service, or property offered to the recall committee free of charge or at less than the usual cost, or payment of a registrant's obligations for such goods, services or property. [WIS. STAT. § 11.0101\(8\)\(a\)2](#). For example, if a volunteer purchases stamps that are used for a mailing and is not reimbursed for the cost of the stamps, the value of the stamps is an in-kind contribution to the committee from that person. When an individual is paid to work on behalf of a committee by a political committee or some other individual, the payment for those services is an in-kind contribution to the committee. If a political committee or individual offers to provide food and beverages for a fundraiser at less than the ordinary market price, the difference between the ordinary market price and the cost to the committee is an in-kind contribution from the political committee or individual. If another committee pays for a newspaper, radio, or TV ad on behalf of the recall committee, that ad would be an in-kind contribution.

Before making an in-kind contribution, the contributor is required to notify the treasurer of the committee and obtain either oral or written consent to the contribution. [WIS. STAT. § 11.1109](#). If the contributor does not know the actual value of the contribution, a good faith and reasonable estimate of the fair market value should be provided to the recall committee before the closing date of the next campaign finance report in which the contribution is required to be listed. [WIS. STAT. § 11.1105](#), [WIS. ADMIN. CODE ETH 1.20\(5\)](#).

In-kind contributions are subject to the same itemization thresholds as monetary contributions. [WIS. STAT. § 11.0101\(8\)](#).

### **Reporting In-Kind Contributions in CFIS**

An in-kind contribution received by the recall committee is reported by the committee as **both a receipt and expenditure**. Reporting the amount of the in-kind contribution as a contribution allows the committee to disclose the receipt of the contribution on its campaign finance report along with cash contributions received and track year to date and campaign period totals. To keep the committee's cash balance accurate, the amount of the in-kind is also reported as an expenditure. The two entries offset each other so as to not affect the committee's cash balance.

If an estimate of the value of an in-kind contribution is the only value available at the time the committee is required to file a report, the committee must report the estimated value of the contribution. [WIS. ADMIN. CODE ETH 1.20\(7\)](#). When the actual value of the estimated in-kind contribution is known, the actual amount is reported as an amendment to the original campaign finance report. *Id.*

## Returned Contributions

A committee may return a contribution at any time before or after it has been deposited. [WIS. STAT. § 11.1110\(1\)](#). Any contribution a committee returns to the donor after depositing it in the campaign account must be reported as a returned contribution to the contributor. A committee that accepts an unlawful contribution, reports that contribution, and returns that contribution within 15 days of the filing date for that report, does not violate the contribution or source limits. [WIS. STAT. § 11.1110\(2\)\(b\)](#).

## Contributions Transferred through Conduits

A conduit is any individual, committee or group that receives contributions from individuals, deposits those contributions in a financial institution, and then transfers the contributions to a candidate or political committee selected by the original contributor. [WIS. STAT. § 11.0101\(7\)](#). The conduit may not exercise any discretion over the amount or ultimate recipient of the contributions. [WIS. STAT. § 11.0701\(3\)](#). A conduit is required to register with the Ethics Commission. [WIS. STAT. § 11.0702](#).

## Reporting Conduit Contributions in CFIS

Conduits are required to provide a transmittal letter with contribution checks sent to a receiving committee. The transmittal letter must identify the organization as a conduit, and list the individual contributors, the amount of each individual's contribution, and the date the individual authorized the contribution. [WIS. STAT. § 11.0704\(1\)](#).

Contributions transferred through conduits are reported as contributions received from the individuals listed in the transmittal letter. [WIS. STAT. § 11.1106\(2\)](#). These contributions are reported under the individual's name. [WIS. STAT. § 11.1106\(1\)](#). They are subject to itemization on the same basis as other individual contributions. [WIS. STAT. § 11.0904\(1\)\(a\)](#).

## Disbursements

“Disbursement” means any of the following:

1. An expenditure by a committee from the committee's depository account.
2. The transfer of tangible personal property or services by a committee.
3. A transfer of funds between committees.
4. The purchase of a ticket for a fundraising event for a committee regardless of whether the ticket is used to attend the event.

[WIS. STAT. § 11.0101\(10\)\(a\).](#)

“Disbursement” does not include any of the following:

1. A communication made exclusively between an organization and its members. In this subdivision, a member of an organization means a shareholder, employee, or officer of the organization, or an individual who has affirmatively manifested an interest in joining, supporting or aiding the organization.
2. A communication or Internet activity by an individual acting in his or her own behalf, or acting on behalf of another person if the individual is not compensated specifically for those services, including the cost or value of computers, software, Internet domain names, Internet service providers, and any other technology that is used to provide access to or use of the Internet, but not including professional video production services purchased by the individual.
3. Any news story, commentary, or editorial by a broadcasting station, cable television operator, producer, or programmer, Internet site, or newspaper or other periodical publication, including an Internet or other electronic publication unless a committee owns the medium in which the news story, commentary, or editorial appears.
4. A nominal fee paid for a communication to the general public.

[WIS. STAT. § 11.0101\(10\)\(b\).](#)

### Required Information for Disbursements

1. An itemized statement of every disbursement exceeding \$20 in amount or value, together with the name and address of the person to whom the disbursement was made, and the date and specific purpose for which the disbursement was made. [WIS. STAT. § 11.0904\(1\)\(a\)8.](#)
2. A statement of totals during the reporting period of disbursements made. [WIS. STAT. § 11.0904\(1\)\(a\)10.](#)

## **Obligations and Loans**

Committees are required to make full reports of all obligations received, made and incurred by the committee. The committee needs to include in each report information covering the period since the last date covered on the previous report. [WIS. STAT. § 11.0904\(1\)\(a\)](#).

“Obligation” means any express agreement to make a disbursement, including the following:

1. A loan or loan guarantee.
2. A promise to purchase, rent, or lease tangible personal property.
3. A promise to pay for a service that has been or will be performed.

[WIS. STAT. § 11.0101\(23\)](#).

### **Required Information for Obligations**

1. An itemized statement of every obligation exceeding \$20 in amount or value, together with the name of the person or business with whom the obligation was incurred, and the date and the specific purpose for which each such obligation was incurred must be reported in campaign finance reports. [WIS. STAT. § 11.0904\(1\)\(a\)9](#).
2. A statement of the balance of obligations incurred as of the end of the reporting period. [WIS. STAT. § 11.0904\(1\)\(a\)11](#).

### **Required Information for Loans**

Each loan of money made to the committee in an aggregate amount or value in excess of \$20, must be reported with all of the following:

1. The full name and mailing address of the lender.
2. A statement of whether the lender is a commercial lending institution.
3. The date and amount of the loan.
4. The full name and mailing address of each guarantor, if any.
5. The original amount guaranteed by each guarantor.
6. The balance of the amount guaranteed by each guarantor at the end of the reporting period.

[WIS. STAT. § 11.0904\(1\)\(a\)7](#).

### **Cash Balances**

Committees are required to provide a statement of the cash on hand at the beginning and end of each reporting period. [WIS. STAT. § 11.0904\(1\)\(a\)6](#). State-level committees will be prompted to provide the beginning and ending cash balances when certifying the campaign finance report in CFIS.

## Coordination with Candidate Committees

Recall committees may coordinate with candidate committees. A coordinated expense on behalf of a committee counts as a contribution to that committee and must be reported as such.

An expenditure for express advocacy is coordinated if any of the following applies:

1. The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party communicates directly with the political action committee, independent expenditure committee, other person, or individual making the expenditure to specifically request that the political action committee, independent expenditure committee, other person, or individual make the expenditure that benefits the candidate and the political action committee, independent expenditure committee, other person, or individual explicitly assents to the request before making the expenditure; or
2. The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party exercises control over the expenditure or the content, timing, location, form, intended audience, number, or frequency of the communication.

[Wis. STAT. § 11.1203\(2\)\(a\).](#)

A “candidate’s agent” means “an individual who has control over day-to-day operation of the candidate committee...” and would include a treasurer or other officer of the committee. [Wis. STAT. § 11.0101\(3\).](#)

“Express advocacy” means:

A communication that contains terms such as the following with reference to a clearly identified candidate and that unambiguously relates to the election or defeat of that candidate:

- (a) “Vote for;”
- (b) “Elect;”
- (c) “Support;”
- (d) “Cast your ballot for;”
- (e) “Smith for ... (an elective office);”
- (f) “Vote against;”
- (g) “Defeat;”
- (h) “Reject;” or
- (i) “Cast your ballot against.”

[Wis. STAT. § 11.0101\(11\).](#)

If an expenditure for express advocacy is coordinated with a candidate committee the recall committee must report the expenditure as a contribution to that committee as required by [Wis. STAT. § 11.0904\(1\)\(a\).](#)

The amount of the coordinated contribution is subject to contributions limits provided for in [Wis. STAT. §11.1101.](#)

Use of publicly available information when creating, producing, or distributing express advocacy communications does not constitute coordination.

### **Independent Expenditures**

An independent expenditure is an expenditure for express advocacy that is not made in coordination with a candidate, candidate committee, candidate's agent, legislative campaign committee, or political party. [WIS. STAT. § 11.0101\(16\)](#). A recall committee must report all of its receipts and expenses, including its independent expenditures as required by [WIS. STAT. § 11.0904\(1\)\(a\)](#).

## CAMPAIGN FINANCE REPORTS

All registrants that are not exempt from filing must file campaign finance reports. Committees must continue to file periodic reports until termination of their registration. These reports must be filed with the appropriate local filing officer when due. Any state-level recall committee must file reports electronically through the CFIS website (<https://cfis.wi.gov/>). [WIS. STAT. § 11.1304\(6\)](#).

The information listed on the campaign finance report discloses the financial activity of the recall committee. The law requires disclosure of income, disbursements, and incurred obligations. [WIS. STAT. § 11.0904\(1\)\(a\)](#). Committee treasurers must exercise diligence in acquiring and furnishing the contributor information required on the receipt schedules. For all contributors, the report must disclose the individual's name and address. [WIS. STAT. § 11.0904\(1\)\(a\)1](#). If the individual's year-to-date total exceeds \$200, you must also provide the individual's occupation. [WIS. STAT. § 11.0904\(1\)\(a\)3](#).

Treasurers are required to make a "good faith effort" to obtain all information required on the reports. [WIS. STAT. § 11.0103\(1\)\(a\)](#).

### **Types of Reports**

Recall committees must file reports based on when the recall primary and election will appear on the ballot. If the recall is on the ballot for a primary election, the recall committee must file a report before the primary election and the general election. If the recall is on the ballot for an April or a November election, the recall committee must file a report before the general election. Recall committees must also file continuing reports in January and July of each year until they terminate (or go on exempt status). [WIS. STAT. § 11.0904](#).

Recall committees that will not spend or receive more than \$2,000 in a calendar year may amend their registration and claim "exempt" status, which means they do not have to file campaign finance reports. See the section "[EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS](#)" for more information.

### **Reporting Periods and Elections:**

**Spring Primary:** A committee that engages in recall activity for a non-partisan state or local office with a primary must file: (1) a pre-primary report; (2) a pre-election report; and (3) annually in each year of an election cycle, a report on January 15 and July 15. [WIS. STAT. § 11.0904\(2\)](#).

**Spring Election:** A committee that engages in recall activity for a non-partisan state or local office elected at the Spring Election must file: (1) a pre-election report; and (2) annually in each year of an election cycle, a report on January 15 and July 15. [WIS. STAT. § 11.0904\(3\)](#).

**Partisan Primary:** A committee that engages in recall activity for a partisan state or local office that has a primary must file: (1) a pre-primary report; (2) a pre-election report; (3) in an odd-numbered year, a report on January 15 and July 15; and (4) in an even-numbered year, a report on January 15 and July 15 and on the 4th Tuesday in September. [WIS. STAT. § 11.0904\(4\)](#).

**General Election:** A committee that engages in recall activity for a partisan state or local office elected at a general election must file: (1) a pre-election report; (2) in an odd-numbered year, a report on January 15 and July 15; and (3) in an even-numbered year, a report on January 15 and July 15 and on the 4th Tuesday in September. [WIS. STAT. § 11.0904\(5\)](#).

If the Election has not yet been ordered: Recall committees must file a report on January 15 and July 15. If the recall election has not been ordered or is never ordered, all recall committees must file those two reports every year. The only exception is for recall committees that have claimed the filing exemption. Committees recalling a state or local partisan office must also file reports on the 4<sup>th</sup> Tuesday in September in even-numbered years. [WIS. STAT. § 11.0904.](#)

Reporting deadlines can be found on the Ethics Commission's website at:

<https://ethics.wi.gov/Pages/CampaignFinance/ReportPeriods.aspx>

### **Local Committees: How to Complete Campaign Finance Reports**

The Ethics Commission requires candidate committees at the local level to file all necessary reports with the appropriate filing officer utilizing the:

- Local Campaign Finance Report Template on paper (<https://ethics.wi.gov/Resources/CF-2L>) or,
- Electronic Local Campaign Finance Report Template (<https://ethics.wi.gov/Resources/CF-2LE>) if the filing officer accepts electronic format.

All contributions received by the committee must be reported in Schedule 1-A (Receipts) of the campaign finance report. Contributions and loans from individuals are listed in Schedule 1A (Contributions Including Loans from Individuals). Contributions from other committees, such as political action committees, political party committees, and other candidate committees, are reported in Schedule 1-B (Contributions from Committees). All other income such as loans from financial institutions, contributions returned from other registrants, refunds, returns of deposits or interest on investments are reported in Schedule 1-C (Other Income and Commercial Loans). The date which must be provided for all contributions is the date the committee **received** the contribution, that is, the date it acquired possession and control of the contribution, **not** the date of deposit or date on the check (unless all dates are the same). [WIS. STAT. § 11.0103\(2\)\(a\)1.](#)

All money spent by the committee is reported in Schedule 2 (Disbursements) of the campaign finance report. General operating expenditures are listed in Schedule 2-A (Gross Expenditures). Contributions to other political committees are listed in Schedule 2-B (Contributions to Committees).

Additional information required to be disclosed is reported in Schedule 3 (Additional Disclosure) of the campaign finance report. All obligations of the committee such as unpaid debts are listed in Schedule 3-A (Incurred Obligations Excluding Loans). Loans and the individuals who guarantee loans for the committee are listed in Schedule 3-B (Loans).

Schedule 4 of the campaign finance report form (Termination Request) is used for requests to terminate a committee.

### **No-Activity Reports**

If a candidate receives no contributions, makes no disbursements and incurs no obligations during a reporting period, the registrant may file a "No Activity Report" ([https://ethics.wi.gov/Resources/CF-2NA Statement of No Activity.pdf](https://ethics.wi.gov/Resources/CF-2NA%20Statement%20of%20No%20Activity.pdf)). This form should be used **only** when there has been no financial activity and the cash balance remains unchanged during the reporting period. [WIS. STAT. § 11.0103\(3\)\(d\).](#)

## State-level Committees: How to Complete Campaign Finance Reports in CFIS

There are two ways to enter campaign finance transactions (contributions and disbursements):

- Using the online screens in the Campaign Finance Information System (“CFIS”), and
- Using the CFIS upload templates.

**Every committee must** use one of the specified, approved forms. [WIS. STAT. § 11.1304\(1\)](#). A committee that chooses to use an upload template with schedule detail must use the approved template. Committees can find upload templates on the CFIS site in the “**Upload Transactions**” section of the menu.

For detailed instructions on how to complete and file the campaign finance report, go to <https://cfis.wi.gov> and click on the **CFIS Manuals** link in the center of the page, or go to the Ethics Commission **CFIS Manuals & Frequently Asked Questions** page: <https://ethics.wi.gov/Pages/CampaignFinance/CFISManuals.aspx>.

### Filing Reports in CFIS

State-level recall committees file campaign finance reports electronically through the CFIS website. The help screens on that site may answer some of your questions. When you have entered all transactions for a reporting period, the CFIS system will automatically generate the report for you and place all transactions on the appropriate schedules.

All contributions received by the committee must be reported in Schedule 1 (Receipts) of the campaign finance report. Contributions and loans from individuals are listed in Schedule 1A (Contributions Including Loans from Individuals). Contributions from other committees, such as political action committees, political party committees, and candidate committees, are reported in Schedule 1B (Contributions from Committees). All other income such as loans from financial institutions, contributions returned from other registrants, refunds, returns of deposits or interest on investments are reported in Schedule 1C (Other Income and Commercial Loans). The date which must be provided for all contributions is the date the committee **received** the contribution, that is, the date it acquired possession and control of the contribution, **not** the date of deposit or date on the check (unless all dates are the same). [WIS. STAT. § 11.0103\(2\)](#).

All money spent by the committee is reported in Schedule 2 (Disbursements) of the campaign finance report. General operating expenditures are listed in Schedule 2A (Gross Expenditures). Contributions to other political committees are listed in Schedule 2B (Contributions to Committees).

Additional information required to be disclosed is reported in Schedule 3 (Additional Disclosure) of the campaign finance report. All obligations of the committee such as unpaid debts are listed in Schedule 3A (Incurred Obligations Excluding Loans). Loans and the individuals who guarantee loans for the committee are listed in Schedule 3B (Loans).

Schedule 4 of the campaign finance report form (Termination Request) is used for requests to terminate a committee.

## ATTRIBUTION STATEMENTS (DISCLAIMERS)

Attribution statements, commonly referred to as disclaimers, are statements required to be placed on any communication containing express advocacy in order to identify the person(s) who paid for and/or authorized the communication. [WIS. STAT. § 11.1303\(2\)](#).

No disbursement by a committee may be made anonymously and no contribution or disbursement may be made in a fictitious name or by one person or organization in the name of another. [WIS. STAT. § 11.1303\(1\)](#).

Every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication containing express advocacy which is paid for by any contribution or disbursement shall clearly identify its source. [WIS. STAT. § 11.1303\(2\)\(a\)](#).

Every communication containing express advocacy the cost of which is paid for or reimbursed by a committee, or for which a committee assumes responsibility, whether by accepting a contribution or making a disbursement, shall identify its source by the words "Paid for by" followed by the name of the committee making the payment or reimbursement or assuming responsibility for the communication and may include the name of the treasurer or other authorized agent of the committee. [WIS. STAT. § 11.1303\(2\)\(b\)](#).

Attribution statements must be readable, legible, and readily accessible. [WIS. STAT. § 11.1303\(2\)\(g\)](#).

Attribution statements do not apply to communications containing express advocacy printed on small items, which would normally require a disclaimer, but cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones. [WIS. STAT. § 11.1303\(2\)\(f\)](#).

### Formats for Disclaimers

When a communication is paid for by a committee, the disclaimer must include the words "Paid for by," followed by the name of the committee:

"Paid for by the Recall Committee."

The disclaimer may also include the name of the treasurer or other authorized agent:

"Paid for by the Recall Committee, James Jones, Treasurer."

When a communication for express advocacy is paid for by the committee in coordination with a recall committee, both the committee making the payment and the committee accepting the in-kind contribution should be listed:

"Paid for by the Recall Committee, Authorized by Mary Smith for Governor."

[WIS. STAT. § 11.1303\(2\)\(b\)](#).

When a committee places a communication for express advocacy that is not in coordination with a candidate, that committee should include the words "Not authorized by any candidate or candidate's agent or committee" in the attribution:

“Paid for by the Recall Committee, Not Authorized by Any Candidate or Candidate’s Agent or Committee”

[WIS. STAT. §11.1303\(2\)\(d\).](#)

## TERMINATION OF REGISTRATION AND REPORTING REQUIREMENTS

A recall committee may terminate its registration if it meets the following requirements. [WIS. STAT. § 11.0105](#):

1. Determines that all financial activity will stop, and that it will no longer receive contributions, make disbursements, or incur obligations; and
2. Files a termination campaign finance report showing that all incurred obligations have been paid or satisfied, and that the cash balance has been reduced to zero; and,
3. Completes a request for termination.

Recall committees that wish to remain active with limited financial activity may file for “exempt” status, which means they would not have to file campaign finance reports during that time. See the section “[EXEMPTION FROM FILING CAMPAIGN FINANCE REPORTS](#)” for more information.

### Disposal of Residual Funds

Residual funds may be used for any purpose that is not for an individual’s strictly personal use and is not prohibited by law, including:

1. Repaying any outstanding loans. If loans are not repaid, they must be forgiven before the committee can request termination; or
2. Returning money to contributors in amounts that are not more than the contributor’s original contribution (note: the treasurer may choose which contributors to refund. The committee is not required to pro-rate and return a portion to all contributors); or
3. Donating money to any tax-exempt charitable organization or the Common School Fund; or
4. Transferring money to another political committee; or
5. Using any combination of the above.

WIS. STAT. [§§ 11.0105, 11.1208\(2\)\(a\)](#).

Prior to making these disbursements of residual funds, the committee must make sure it does not have any pending fees or settlement offers.





# Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics  
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**DATE:** For the Commission Meeting on February 25, 2020

**TO:** Members, Wisconsin Ethics Commission

**FROM:** David Buerger, Staff Counsel

**SUBJECT:** Draft Formal Advisory Opinions

## FOR COMMISSION ACTION

1. For 2020 ETH 01 – 50-Piece Rule and Mixed-Use Social Media Accounts, does the Commission have any feedback or does it wish to adopt the formal advisory opinion as drafted?
2. For 2020 ETH 02 – Duties on Behalf of a Principal as Exclusive or Not Exclusive to Lobbying, does the Commission have any feedback or does it wish to adopt the formal advisory opinion as drafted?
3. For 2020 ETH 03 – Application of 50-Piece Rule to Communications with Petition Signatories and Newspaper Advertisements, does the Commission have any feedback or does it wish to adopt the formal advisory opinion as drafted?

## Background

At the Commission’s meeting on December 3, 2019, while in closed session, the Commission directed staff to prepare formal versions of three advisory opinions for consideration at its next regular meeting. Staff has anonymized the advisory opinions and the records obtained in connection with the request as required by WIS. STAT. §§ [19.46\(2\)\(b\)5.](#) and [19.55\(4\)\(c\)](#) and is now seeking the Commission’s approval or feedback for each attached draft formal advisory opinion. If approved, Commission staff will publish each formal advisory opinion and the records obtained in connection with the request to its website as required by WIS. STAT. §§ [19.46\(2\)\(c\)3.](#) and [19.55\(4\)\(c\).](#)

## Attachments

1. 2020 ETH 01 – 50-Piece Rule and Mixed-Use Social Media Accounts
2. 2020 ETH 02 – Duties on Behalf of a Principal as Exclusive or Not Exclusive to Lobbying
3. 2020 ETH 03 – Application of 50-Piece Rule to Communications with Petition Signatories and Newspaper Advertisements

*Wisconsin Ethics Commissioners*

Paul Connell | Mac Davis | David R. Halbrooks | Tamara Packard | Pat Strachota | Timothy Van Akkeren

*Administrator*

Daniel A. Carlton, Jr.



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## 2020 ETH 01

### CAMPAIGN FINANCE & ETHICS – 50-PIECE RULE AND MIXED-USE SOCIAL MEDIA ACCOUNTS

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You are a legislative staff person. You have asked for an advisory opinion regarding the use of official legislative social media accounts and legislative office budgets for various types of communications when under the restrictions of [Wis. STAT. § 11.1205](#) (“the 50-piece rule”).

#### Summary:

It is the opinion of the Commission that legislators and legislative staff may use official legislative social media accounts and legislative office budgets as described below.

#### Analysis:

##### A. Wisconsin’s 50-Piece Rule

The questions in this section primarily require the application of [Wis. STAT. § 11.1205](#):

#### **11.1205 Use of government materials by candidates.**

##### **(1)**

**(a)** Except as provided in sub. **(2)**, no person elected to state or local office who becomes a candidate for national, state, or local office may use public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed after:

- 1.** In the case of a candidate who is nominated by nomination papers, the first day authorized by law for circulation of nomination papers as a candidate.
- 2.** In the case of a candidate who is nominated at a primary election by write-in votes, the day the board of canvassers issues its determination that the person is nominated.
- 3.** In the case of a candidate who is nominated at a caucus, the date of the caucus.
- 4.** In the case of any other candidate who is nominated solely by filing a declaration of candidacy, the first day of the month preceding the month which includes the last day for filing the declaration.

**(b)** This subsection applies until after the date of the election or after the date of the primary election if the person appears as a candidate on a primary election ballot and is not nominated at the primary election.

**(2)** This section does not apply to use of public funds for the costs of the following:

- (a)** Answers to communications of constituents.
- (b)** Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken.
- (c)** Communications between members of the legislature regarding the legislative or deliberative process while the legislature is in session.
- (d)** Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

1. Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?

Wisconsin law prohibits individuals elected to state or local office who become candidates for national, state, or local office from using public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material distributed during a campaign period (“the 50-piece rule”), except as specifically permitted. [WIS. STAT. § 11.1205](#).

Over the course of 2018 and 2019, the Commission has taken several steps to clarify the appropriate uses of social media by public officials and explain the application of the 50-piece rule to social media communications. See [2018 ETH 03](#), Guidelines [ETH-1251](#) and [ETH-1253](#). In [2018 ETH 03](#), the Commission formally analyzed [WIS. STAT. § 11.1205](#) and considered how to count instances of electronic communication under the 50-piece rule. In that opinion, the Commission held that electronic communications where the sender actively selects recipients would be counted as a single “piece” per recipient (e.g., emails, text messages, or direct messages); however, electronic communications that were published in a singular form, but could be read by multiple individuals (e.g., a website page, Facebook post, or tweet) would only be counted as a single piece. [2018 ETH 03](#). This remains true regardless of the number of times the page, post, or tweet is viewed.

However, [2018 ETH 03](#) is silent as to the question of how a recipient’s share of a communication with others should be counted under the 50-piece rule. The statute is similarly silent. See [WIS. STAT. § 11.1205](#). For example, if a legislator who is up for election uses a state computer system during the campaign period to send a single individual an email and that person independently decides to forward that email to 50-plus others, would that be a violation of the 50-piece rule? What if the sender asks the original recipient to forward it and the recipient sends it to 50 plus others, would that be a violation of the 50-piece rule? The answer to these questions require an interpretation the language of [WIS. STAT. § 11.1205](#).

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

While the 50-piece rule is codified in Chapter 11, the campaign finance laws, the 50-piece rule is more akin to the prohibitions of subchapter III of Chapter 13 or Chapter 19 in that it regulates conduct by current officeholders and seeks to prohibit abuses of office. In these contexts, there are long-standing interpretations that an official cannot do indirectly what he or she is prohibited from

doing directly, even where the statute is silent as to indirect applications. *See e.g.*, [2003 Eth Bd 11](#), ¶3; [2001 Wis Eth Bd 02](#), ¶7. As these other prohibitions are similar in nature to the prohibition of the 50-piece rule, the Commission believes a similarly inclusive interpretation would be appropriate when interpreting the prohibition here. However, reading [WIS. STAT. § 11.1205](#) to include every email forward, Facebook share or Twitter retweet of an original communication would likely produce an absurd result where the sender has no knowledge or control over the republication including how many times the message is shared subsequent to the initial communication.

To avoid counting every instance of an initial recipient subsequently sharing a communication while still prohibiting circumvention of the restrictions of the 50-piece rule by employing another, the Commission again will look to the original sender's intentions and adopt an objective test where only the republications intended by the original sender will be counted. Accordingly, where the sender requests or intends for an initial recipient(s) to share the original communication with others, the Commission would then count the republications by the initial recipient(s) done at the request of the original sender as if they were done by the original sender.

2. Can elected officials use office funds to take out a legislative ad in a local newspaper while under the "50-piece rule"?

For each of the remaining 50-piece rule questions, it is important to note that the Ethics Commission can only speak to the laws it administers (Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19). The Commission generally has no authority over the use of legislative office funds. It is the understanding of the Commission that questions regarding the distribution of materials by legislators at government expense should be directed to either the Senate or Assembly Chief Clerk as appropriate. However, as you have asked specifically if these uses of funds would be permitted under the 50-piece rule, the Commission will answer your questions with caveat that when contemplating a use of legislative office funds, you should first seek an answer from the Chief Clerk's Office as to whether a specific expenditure is an appropriate use of state resources and consistent with the policies of the Legislature.

As explained in response to the first question, the 50-piece rule prohibits the use of public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). This is true regardless of whether the sender is communicating a legislative or campaign message. *See* [WIS. STAT. § 11.1205](#), [2018 ETH 03](#). Additionally, the selection of recipients is only a factor in counting the number of pieces for electronic communications. [2018 ETH 03](#). In this situation, while the elected official may only be sending one piece (i.e., the proposed ad) to the newspaper, it is clear that by paying the newspaper to publish the advertisement, the elected official would be using public funds to pay for the newspaper's subsequent production and distribution of the ad in each newspaper that is to be printed. Assuming the newspaper prints 50 or more copies, this practice would likely run afoul of the 50-piece rule when done during the campaign period. This conclusion is consistent with an informal opinion of the Elections Board in 1996, which held that "because public money would be used to purchase the distribution of more than 49 pieces of identical material (the ad in the newspaper), and because publication is deemed to fall within the statutory language, 'the cost of materials or distribution,' the post-June 1 publication would be proscribed by s. 11.33, Stats."

3. Can elected officials use office funds to place a legislative radio ad while under the “50-piece rule?”
  - a) Are members restricted to 49 spots per ad?

The 50-piece rule only applies to the cost of materials or distribution for 50 or more pieces of substantially identical material. [WIS. STAT. § 11.1205](#). A radio ad is a single audio recording broadcast on a specific radio frequency that can be received by any listener with a radio tuned to that frequency within range of the transmitter.<sup>1</sup> This singularity of material makes radio broadcasts more akin to a bulletin board or billboard, which are similarly platforms for a single message to be received by a large number of individuals. As such, the Commission believes that the 50-piece rule would not prohibit elected officials from using office funds to place legislative radio ads during a campaign period. However, to address the follow-up question, if subject to the 50-piece rule, an elected official is still limited to no more than 49 pieces of substantially identical material, so any single radio ad could not be played more than 49 times during the campaign period without running afoul of the statute.

4. Can an elected official use office funds to mail a legislative newsletter to a Postal patron route or “Every Door Direct Mail” list while under the “50-piece rule”? (see USPS postal patron map attached)

Similar to the response to Question #2, it is important to note that the 50-piece rule prohibits a candidate from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). A USPS Postal Patron mailing, also known as Every Door Direct Mail, delivers a copy of the submitted piece to every mailbox within a certain area or route. Again, the selection of recipients is only a factor in counting the number of pieces for *electronic communications* per [2018 ETH 03](#). In this situation the elected official is still using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material (i.e., each piece of direct mail). The fact that the sender is not selecting the recipients is not a consideration in physical communications like legislative newsletters. As such, the Commission believes such a use of office funds would be prohibited under [WIS. STAT. § 11.1205](#) if done by a covered official during the campaign period.

Additionally, the Commission would note an opinion issued by the Elections Board, [1976 Wis El Bd 16](#) (withdrawn December 6, 2016) that spoke to the practice of sending out legislative newsletters during the campaign period. While this opinion has been withdrawn by the Commission due to its references to laws that have since been repealed and recreated, this opinion considered the use of legislative office accounts to send out legislative newsletters under the prior iteration of the 50-piece rule and while it was not the central holding of the opinion, the Board did state that since distribution of 100 or more newsletters during the campaign period would be prohibited, distribution prior to the campaign period would presumably be allowed. While the language of the 50-piece rule has changed between 1976 and 2019 (notably moving the maximum number of pieces allowed from 99 to 49), the Commission believes this opinion demonstrates that the prior practice was for legislative offices to be restricted from such expenditures during the

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<sup>1</sup> Many radio stations simulcast their broadcasts to the Internet. Consistent with [2018 ETH 03](#) we believe the simulcast, if known to and intended by the sender, would count as one additional piece.

campaign period and we see no evidence that in the various changes to the 50-piece rule over years the Legislature intended any different conclusion.

5. Can elected officials use office funds to promote their account, boost a post or take out legislative ads on social media platforms including Facebook, Twitter, and Youtube while under the “50-piece rule”?
  - a) If so, how targeted can these be?
    - 1) Can you target an ad to individuals only within your Legislative District?
    - 2) Can you target an ad to individuals based on other criteria? (Individuals within a certain radius of an event? Individuals who follow other social media pages? Individuals that meet certain demographic criteria? ... see attached photos *FBad1* and *FBad2* for example of potential targeting)
  
6. Example #1:
  - a) We hold regular monthly listening sessions around the district throughout the year
  - b) For each listening session, we send out a news release, post the event on our website and create a Facebook event.
    - 1) Once under the 50-piece rule, we send press releases to fewer than 50 email addresses.
  - c) If we are allowed to continue promoting these events on Facebook using office funds, those posts can reach hundreds or thousands of local residents.
    - 1) For example, one Facebook ad for a local listening session during the budget process, using \$250 from our office account, reached 8,996 residents in the [legislative district] and resulted in 170 rsvp’s for that listening session.
    - 2) See attached *FBlisteningssession* and *FBlisteningssession2* graphics for an example of what those ads generally look like.
  - d) Can we continue to use office funds to promote these listening sessions?
  
7. Example #2:
  - a) We generally research policies and draft legislation in the summer and fall months of even numbered years.
  - b) We will be rolling out a list of legislative priorities later this year and asking the public to weigh in on the list of policies that they’d like the legislature to focus on and prepare for.
  - c) Can we promote a post soliciting feedback from the public on legislative priorities?
    - 1) i.e. “I’m working to ensure every family has access to quality health care, strong schools, safe roads and clean drinking water. Let me know what issues you’d like the state legislature to focus on.”
  - d) Can we promote a post that provides information to residents on relevant and timely legislative issue?
    - 1) i.e. “As children head back to school, many communities are struggling with teacher shortages, outdated facilities and a lack of state funding.

Visit *[legislative website link]* to learn more about what's being done to address these issues.”

In order to answer these questions, a brief review of how the Commission understands these social media platforms to work at present is necessary as technology is constantly evolving. Facebook, Twitter, and YouTube each have “feeds” which show content to the user. A feed is created by the platform via an algorithm and largely consists of content that the user has either indicated they wish to see by liking, following, or subscribing to the content producer or by the platform placing the content in the user’s feed due to other factors (e.g., demographics of the user, similarity to other content the user has viewed, etc.) It is important to note that a user does not see every piece of content from every content producer they like, follow, or subscribe to unless the user goes to that specific content producer’s page on the platform. A content producer who wishes to expand the number of users who see the producer’s content in their user “feed” can choose to pay the platform to place their content in more users’ feeds.

There are multiple ways a content producer can expand their reach on social media platforms. On Facebook in particular, a content producer can choose to “boost” a post. A boost is essentially an advertisement consisting of the chosen post. After selecting a post to boost, the content producer can choose their audience through the following options (see FBad1):

- People you choose through targeting
  - Targeting options are extensive and include criteria like location, age, education, financial status, interests, behaviors, political affiliation, etc.
- People who like your Page
- People who like your Page and their friends
- People in your local area

After defining the intended audience, the content producer is then asked to set a duration for the ad and the total budget (see FBad2). Depending on the budget, Facebook estimates the number of users who will be reached per day and attempts to divide the total budget evenly across the entire duration of the ad. Facebook also permits content producers to create custom audiences from custom lists of phone numbers, email addresses, website cookies, etc.; although it is the understanding of the Commission that Facebook will not allow either targeting options or custom audiences that would narrow the potential audience for an ad to less than 50.

If the content producer would like to get more users to like their page (and thereby gain more viewers of their content via posts, instead of via paid advertising), another option is to “promote” the content producer’s page. Promoting is essentially creating an advertisement for the content producer’s page as a whole instead of just a particular post. These ads can then be tailored to a particular audience similar to selecting the audience for a boosted post and have similar duration and budget options.

The final option on Facebook is to simply place a traditional paid advertisement. These ads are not placed in the user’s feed between posts, but instead are located in a static position elsewhere on the screen. Traditional ads have the same options for audience selection, duration, and budget.

You ask if elected officials can use their office accounts for these types of advertising (boosted posts, promoted pages, and traditional paid advertisements) on social media when under the 50-piece rule. Again, by its terms, the 50-piece rule prohibits officials from using public funds for the cost of materials or distribution of 50 or more pieces of substantially identical material during a campaign period. [WIS. STAT. § 11.1205](#). Consistent with the Commission’s prior advice in [2018 ETH 03](#), the Commission believes an official could continue to include a notice of a listening session on their legislative website, create a Facebook event, create a Facebook post about the session, and send a news release regarding the event out to up to 49 recipients when under the restrictions of the 50-piece rule. However, using legislative office funds to further promote those sessions via paid advertisement (boosted post, promoted page, or traditional paid advertisement) on social media during the campaign period, would be limited by the 50-piece rule as the official is paying to distribute substantially identical material multiple times. As such, a covered official may be able to boost a post or promote a page during the campaign period, but only to no more than 49 people, which may not be technically possible on the social media platforms described.<sup>2</sup>

## B. Mixed Use Accounts

1. Can legislative staff manage and post content on “mixed use” social media accounts used by elected officials?

In 2012, the Government Accountability Board (“GAB”) issued an informal advisory opinion on the use of social media by legislators and described its recommendations for best practices to avoid potential campaign finance and ethics violations. This letter was approved by the Government Accountability Board at its March 20, 2012 meeting. In this letter, the GAB advised that because state resources would be used to create and maintain official legislator social media pages, those pages may not be used for campaign or personal purposes.

Later in 2012, the Chief Clerks of the Legislature followed up their initial request with further questions on the permissible uses of social media by legislators and their staff. On October 11, 2012, the Director and General Counsel of the GAB issued a letter which reiterated the earlier guidance approved by the GAB and expanded into the topic of “mixed-use” sites such as a legislator’s personal or campaign social media sites. The relevant advice is excerpted below:

*With respect to the use of state staff and resources to create and post materials to the web or other social media pages that contain a mix of legislative and personal materials, including business and campaign materials, our advice is:*

1. *State resources should not be used to **create** a website or Facebook page that will be used for mixed purposes.*
2. *Subject to paragraph 3, **a legislator** may post any type of content at any time to a website, Facebook page or other social media.*

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<sup>2</sup> If the social media ad is substantially identical to either the notice on the legislative website, Facebook post, Facebook event, or news release, those instances of substantially identical communication are combined with the instances of the social media ad when tallying the 49 pieces allowable under the rule.

3. A legislator should **not use state resources**, such as a state computer, to post non-legislative content to a website, Facebook page, or other social media other than purely personal (not campaign or business) content.
4. **Legislative staff** may post **legislative content** to a mixed-use website, Facebook page, or other social media at any time, even if using state resources, but not to a campaign website, campaign Facebook page, or other forms of campaign social media. However, legislative staff should do this only with respect to materials that are distributed more broadly to the press and public.
5. **Legislative staff** may post personal, business, or campaign content to a mixed-use website, Facebook page, or other social media **only** on personal time and without using state resources,
6. Although a mixed-use website may contain a link to the legislator's official state webpage, a state webpage should not be linked to a mixed-use website, Facebook page, or other social media.

See the below table that was included in the GAB letter to illustrate permissible and impermissible activities:

| Type of website                             | Legislative                                 |                             | Personal                    |                             | Campaign                    |       | Business                       |       |
|---|---|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-------|--------------------------------|-------|
| Example                                     | WI State Rep John Doe (Facebook)            |                             | John Doe (Facebook)         |                             | Doe for Assembly (Facebook) |       | Doe Consulting, LLC (Facebook) |       |
| Type of Person                              | Legislator                                  | Staff                       | Legislator                  | Staff                       | Legislator                  | Staff | Legislator                     | Staff |
| Using State Resources                       | L<br>Some P<br>No C<br>No B                 | L<br>Some P<br>No C<br>No B | L<br>Some P<br>No C<br>No B | L<br>Some P<br>No C<br>No B | X                           | X     | X                              | X     |
| On State Time                               | L<br>Some P<br>No C<br>No B                 | L<br>Some P<br>No C<br>No B | Any                         | L<br>Some P<br>No C<br>No B | Any                         | X     | Any                            | X     |
| Off State Time/Resources                    | L<br>Some P<br>No C<br>No B                 | L<br>Some P<br>No C<br>No B | M                           | M                           | Any                         | Any   | Any                            | Any   |
| Link of the Wisconsin Legislature's Website | Yes   |                             | No                          |                             | No                          |       | No                             |       |
| Policing content from others                | Yes   |                             | NA                          |                             | NA                          |       | NA                             |       |
| Notes                                       | This is essentially a legislative resource. |                             |                             |                             |                             |       |                                |       |

**Key**

L = Legislative post      M = Mixed Content  
P = Personal post        X = Not Allowed  
C = Campaign post        NA = Not applicable  
B = Business post

It is the understanding of this Commission that paragraphs 1-5 of the above GAB advice was further adopted by the Chief Clerks and incorporated into their respective chambers' policy manuals for legislative staff. On June 21, 2018, the Ethics Commission re-iterated this advice in a letter to the Chief Clerks of the Legislature with the clarification that paragraph 2 only applied to posts to mixed-use websites/accounts and that official legislative social media accounts should only be used for official governmental purposes. A legislator's use of an official legislative social media account for campaign or business purposes, even when not using a state computer or on state time, could be a violation of WIS. STAT. § [19.45 \(2\)](#) and [\(5\)](#).

Consistent with that prior advice, the Commission again advises that legislative staff may only post and manage legislative content on a mixed-use website or social media account while on state

time and may only post such materials to a mixed-use website or account that are distributed more broadly to the press and public. Legislative staff may only post personal, business, or campaign content to a mixed-use website or social media account on personal time and without the use of state resources.

2. Can elected officials with a “mixed use” social media account promote their account, boost a post or take out ads on Facebook/Twitter using office funds?

Reviewing the above table summarizing the advice provided by the Government Accountability Board and reaffirmed and further clarified by the Commission, it is clear that no person is authorized to use state resources to post campaign or business material. This is consistent with the general public purpose doctrine established by the courts in *State ex rel. Thompson v. Giessel*, 265 Wis. 207 (1953). This doctrine holds that expenditures of public money have to be made for a public purpose. However, the Commission does not make the determination of whether a given expenditure is for a public purpose. The proper way for such an issue to be decided is by way of a taxpayer civil action against the spending authority, which the courts would adjudicate, not this Commission.

It would logically follow that if legislative staff on state time can use state resources to post legislative content to a mixed-use social media account, state resources could also be used to boost or take out ads for such legislative posts on the mixed-use social media account. However, as legislative staff are only permitted to post such legislative content to a mixed-use social media account when the content is more broadly distributed to the media and the public, paying to boost or take out an ad for a post on a mixed-use social media account would not appear to be consistent with the original advice as it appears to contemplate that the post to the mixed-use account would be secondary to the original broader communication to the public and the media. Furthermore, as a general question as to the proper use of legislative resources, this is also a question that cannot be answered by the Ethics Commission alone and should also be directed to the Chief Clerk’s Office.

Finally, because paid promotion of a mixed-use account as a whole could potentially benefit the official, their immediate family, or organizations with which the official is associated via the other content contained within and disseminated by that mixed-use social media account (i.e., business, campaign, etc.), the Commission advises against officials using state resources to promote mixed-use social media accounts as it could be a potential violation of [Wis. Stat. § 19.45\(2\)](#). This issue is further complicated by the potential for an official to later take a mixed-use account with them when they leave their public position, potentially retaining an asset of substantial value that was maintained or potentially even enhanced in value through the use of public resources.

**From:** [REDACTED]  
**To:** [Carlton, Daniel - ETHICS](#)  
**Subject:** RE: Social Media Guidance  
**Date:** Wednesday, September 18, 2019 10:20:20 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[FBad1.png](#)  
[FBad2.png](#)  
[USPSpostalpatron.png](#)

---

Hi Dan,

Thanks for sitting down last week to talk more about our request. At this time, I'd like to clarify that our request is for an informal opinion. Below are a list of questions that we would like guidance on:

### **50 piece rule questions**

Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?

Can elected officials use office funds to take out a legislative ad in a local newspaper while under the "50 piece rule?"

Can elected officials use office funds to place a legislative radio ad while under the "50 piece rule?"

- Are members restricted to 49 spots per ad?

Can an elected official use office funds to mail a legislative newsletter to a Postal patron route or "Every Door Direct Mail" list while under the "50 piece rule?"

- (*see USPS postal patron map attached*)

Can elected officials use office funds to promote their account, boost a post or take out legislative ads on social media platforms including Facebook, Twitter, and Youtube while under the "50 piece rule?"

- If so, how targeted can these be?
  - Can you target an ad to individuals only within your Legislative District?
  - Can you target an ad to individuals based on other criteria? (Individuals within a certain radius of an event? Individuals who follow other social media pages? Individuals that meet certain demographic criteria? ... see attached photos *FBad1* and *FBad2* for example of potential targeting)

### **Example #1:**

- We hold regular monthly listening sessions around the district throughout the year

- For each listening session, we send out a news release, post the event on our website and create a Facebook event.
  - Once under the 50 piece rule, we send press releases to fewer than 50 email addresses.
- If we are allowed to continue promoting these events on Facebook using office funds, those posts can reach hundreds or thousands of local residents.
  - For example, one Facebook ad for a local listening session during the budget process, using \$250 from our office account, reached 8,996 residents in the [REDACTED] District and resulted in 170 rsvp's for that listening session.
  - See attached *FBlisteningession* and *FBlisteningession2* graphics for an example of what those ads generally look like.
- Can we continue to use office funds to promote these listening sessions?

Example #2:

- We generally research policies and draft legislation in the summer and fall months of even numbered years.
- We will be rolling out a list of legislative priorities later this year and asking the public to weigh in on the list of policies that they'd like the legislature to focus on and prepare for.
- Can we promote a post soliciting feedback from the public on legislative priorities?
  - i.e. "I'm working to ensure every family has access to quality health care, strong schools, safe roads and clean drinking water. Let me know what issues you'd like the state legislature to focus on."
- Can we promote a post that provides information to residents on relevant and timely legislative issue?
  - i.e. "As children head back to school, many communities are struggling with teacher shortages, outdated facilities and a lack of state funding. Visit [REDACTED] to learn more about what's being done to address these issues."

**"Mixed Use" accounts (social media accounts containing a mix of legislative and campaign content)**

- Can legislative staff manage and post legislative content on "mixed use" social media accounts used by elected officials?
- Can elected officials with a "mixed use" social media account promote their account,

boost a post or take out ads on Facebook/Twitter using office funds?

Again, happy to chat more or clarify any of these requests if you or your staff have questions.

Thanks,

[REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



---

**From:** Carlton, Daniel - ETHICS <Daniel.Carlton@wisconsin.gov>

**Sent:** Tuesday, August 20, 2019 12:32 PM

**To:** [REDACTED]

**Subject:** RE: Social Media Guidance

When I ask whether you want it to be public, I need to clarify something...the requestor's identity is always redacted. I'll talk to you a little more about it after the meeting today. May not be able to follow up with you until tomorrow morning, though.

Dan

---

**From:** [REDACTED]

**Sent:** Tuesday, August 20, 2019 11:53 AM

**To:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>

**Subject:** RE: Social Media Guidance

Thanks Dan,

I did have one other follow-up question for you... Would this opinion be made public by the commission, or would it only be provided to our office?

Thanks,

[REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



**From:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>  
**Sent:** Friday, August 16, 2019 12:16 PM  
**To:** [REDACTED]; ETH Ethics <[ethics@wisconsin.gov](mailto:ethics@wisconsin.gov)>  
**Cc:** [REDACTED]  
**Subject:** RE: Social Media Guidance

Good afternoon,

This email is to acknowledge receipt of your opinion request. As you are probably aware, the Commission is meeting on Tuesday, August 20, 2019. As we are within a few business days, we will not be able to prepare the opinion you requested in time for this meeting. The next regularly scheduled meeting of the Wisconsin Ethics Commission is December 3, 2019. A formal opinion can definitely be prepared and deliberated by the Commission at that meeting.

After the Commission's meeting on Tuesday, we will begin working on this request. I anticipate that we will be requesting some additional information from you at that point. Until then, should you have any questions or need anything further, please don't hesitate to contact me.

Sincerely,

Dan

**Daniel A. Carlton, Jr.**  
Administrator

Wisconsin Ethics Commission  
Campaign Finance | Lobbying | Ethics  
<https://ethics.wi.gov> | (608) 266-8123 | Twitter: [@EthicsWi](https://twitter.com/EthicsWi)

*This email may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format.*

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**From:** [REDACTED]  
**Sent:** Friday, August 16, 2019 12:01 PM  
**To:** ETH Ethics <[ethics@wisconsin.gov](mailto:ethics@wisconsin.gov)>  
**Cc:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>; [REDACTED]  
**Subject:** Social Media Guidance

Hello,

I would like to request a formal opinion from the ethics commission regarding the use of

social media accounts by legislative offices. In particular, I would like official guidance from the commission on the following matters:

- **Wisconsin’s “50 piece rule”**
  - Does one Facebook/Twitter post count as sending out one item regardless of how many individuals view or share it?
  - Can elected officials use office funds to promote their account, boost a post or take out legislative ads on Facebook/Twitter while under the “50 piece rule?”
  - Do legislative social media accounts not associated with a specific official fall under any “50 piece rule” restrictions? (i.e. “Senate Republicans” [@WIGOPSenate](#) or “WI JFC Democrats” [@JFCDemocrats](#))
  
- **“Mixed Use” accounts**
  - Can legislative staff manage and post content on “mixed use” social media accounts used by elected officials?
  - Can elected officials with a “mixed use” social media account promote their account, boost a post or take out ads on Facebook/Twitter using office funds?
  
- **Blocking/banning users and deleting/hiding content**
  - Can legislators block/ban individuals who use profane or threatening language from following their official social media accounts?
  - Can legislators block/ban members of the public from viewing or following “mixed use” social media accounts?
  - Can legislators delete or hide public comments on their official social media account if they are deemed to be profane, threatening, or campaign related?

I appreciate your consideration of these issues and would be happy to answer any questions or provide additional clarification of these requests if needed.

Thank you,

- [REDACTED]

[REDACTED]  
**Office of** [REDACTED]  
[REDACTED]



## AUDIENCE

People you choose through targeting

Edit

Location - Living In United States: [REDACTED]  
(DMA)

Age 18 - 65+

People Who Match Interests: Knights of Columbus or The Wall Street Journal, Behaviors: Anniversary (within 61-90 days) or Likely engagement with US political content (moderate), Job title: Football Coach

Less ▲

People who like your Page

People who like your Page and their friends

People in your local area

Create New Audience

### Automatic Placements (Recommended)

ON

Use automatic placements to maximize your budget and help show your ads to more people. Facebook's delivery system will allocate your ad set's budget across multiple placements based on where they're likely to perform best. [Learn more.](#)

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## DURATION AND BUDGET

Duration ⓘ

Days 10

End date  Sep 27, 2019

Total budget ⓘ

\$1,000.00 USD

Estimated People Reached ⓘ

5,000 - 15,000 people per day

of 43,000

Refine your audience or add budget to reach more of the people that matter to you.

You will spend **\$100.00** per day. This ad will run for **10** days, ending on Sep 27, 2019.

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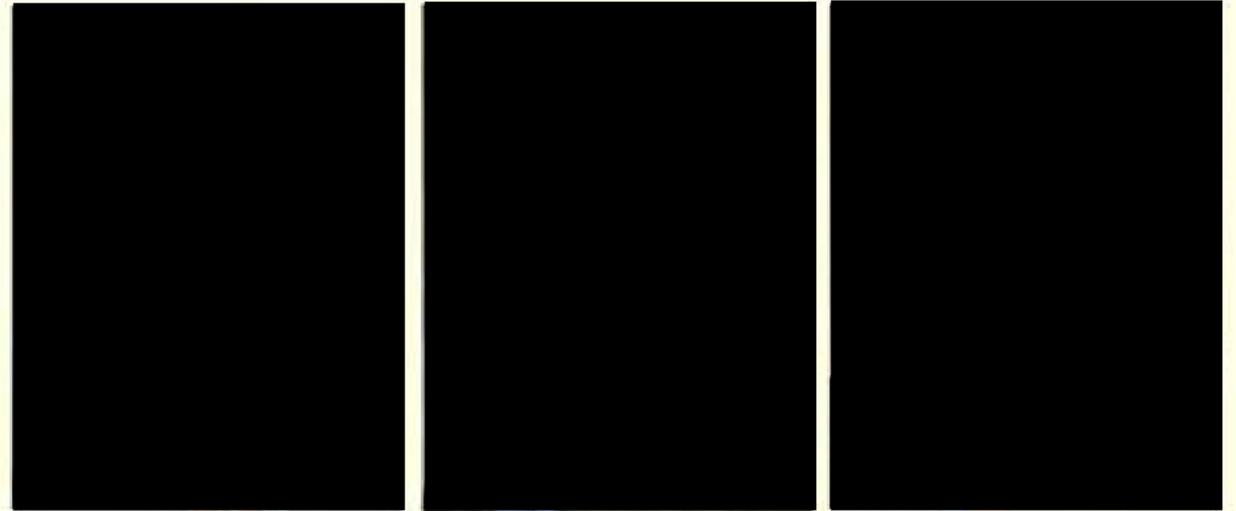
# BUDGET LISTENING SESSION

with Senator [REDACTED],  
Senator [REDACTED]  
& Representative [REDACTED]

[REDACTED], 2019

**5:30 pm - 7:00 pm**

[REDACTED] LIBRARY  
[REDACTED]  
[REDACTED]



Sen. [REDACTED]  
[REDACTED] Senate District

Sen. [REDACTED]  
[REDACTED] Senate District

Rep. [REDACTED]  
[REDACTED] Assembly District

FOR MORE INFORMATION, PLEASE CONTACT:

[REDACTED]  
[REDACTED]  
[REDACTED]



Join Sen. [REDACTED]  
and Rep. [REDACTED]

# BUDGET LISTENING SESSION

[REDACTED], 2019  
5:30 PM - 6:30 pm

[REDACTED]  
Community Room

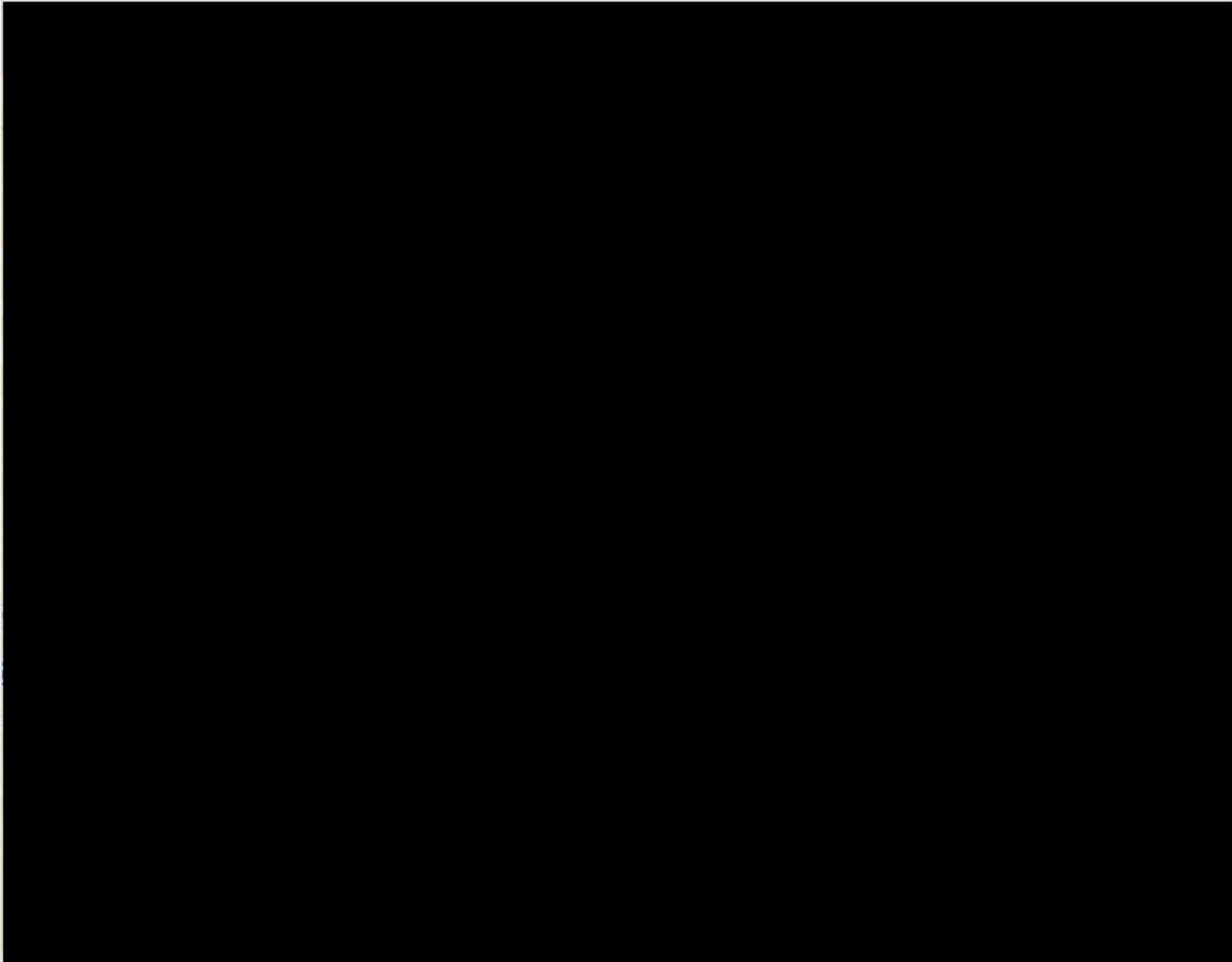


[REDACTED]

*This event is free and open to the public.*

✕ 🔍 📍

| ROUTE      | RESIDENTIAL | BUSINESS | TOTAL | AGE 25-44 | SIZE     | INCOME   | COST     |
|------------|-------------|----------|-------|-----------|----------|----------|----------|
| ██████████ | 707         | 15       | 722   | 28%       | 2.46 PPL | \$50.82K | \$135.01 |



## Order Summary

Individual Routes Selected  
**6**

Post Office™ Drop-Offs >  
**1**

Total Delivery Addresses [Clear](#)  
**3872**

Approximate Cost [i](#)  
**\$724.06**

[Continue](#)

[Save](#)



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## 2020 ETH 02

### LOBBYING – DUTIES ON BEHALF OF A PRINCIPAL AS EXCLUSIVE OR NOT EXCLUSIVE TO LOBBYING

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You are the Government Relations Director for a lobbying principal. You have presented certain duties and inquire whether, under the applicable statutes, a lobbyist who is assigned those duties has duties that are considered exclusively limited to “lobbying.”

#### Summary:

It is the opinion of the Commission that because one or more of the lobbyist’s duties include things other than attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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), the lobbyist’s duties overall are not exclusive to lobbying. Therefore, the lobbyist must be authorized by the fifth day of lobbying communication on behalf of the principal within a six-month reporting period.

#### Analysis

The following are the duties contained in your original inquiry:

1. Meet with legislators, agency professionals and administration leaders as needed to successfully promote the principal’s policy priorities;
2. Regularly meet with principal staff on policy priorities;
3. As needed, brief volunteers and Board leaders of the principal on the principal’s policy priorities, legislative process, and political climate;
4. Review proposed bills and regulations that the principal may have an interest in and discuss position and potential engagement with the principal;
5. Notify principal staff of upcoming public hearings, particularly when principal participation is optimal;
6. Provide counsel regarding testimony before the Legislature or state agency;
7. Provide insight and guidance on media opportunities related to the principal’s policy priorities;
8. Participate in coalition meeting/calls as necessary and appropriate;
9. Review and provide guidance on communications with volunteers and Board leaders of the principal; and
10. Other duties as necessary and agreed upon by both parties.

In subsequent conversations you clarified duties 7-10 as follows:

7. Provide insight and guidance on media opportunities related to the principal’s policy priorities. The target audience depends on the type of media opportunity. Sometimes the media opportunity targets Wisconsin residents to engage them on a grassroots level to get more involved in advocacy activities with the principal, and sometimes the opportunity aims to get specific legislator’s attention as well as the constituents in their district. The opportunities are all earned media and not paid for by the principal.
8. Participate in coalition meeting/calls as necessary and appropriate.

This usually includes other groups like the principal that work together on a common issue. This coalition does not include state officials or state employees. The meetings and/or calls could be either in preparation for lobbying communications or for internal or grassroots efforts.

9. Review and provide guidance on communications with volunteers and Board leaders of the principal.

Communications to volunteers and Board leaders of the principal are usually to inform them on issues but depends on the circumstance.

10. Other duties as necessary and agreed upon by both parties.

You speculated a duty in this category to be giving insight to the principal about upcoming elections. You also noted that this clause is infrequently relied on to expand upon a lobbyist's duties.

The crux of your question is when the individual with the aforementioned duties is required to be authorized by the principal. The licensure and authorization requirements are found in [WIS. STAT. § 13.66](#), which provides:

Except as authorized under s. [13.621](#), no person may engage in lobbying as a lobbyist unless the person has been licensed under s. [13.63](#) and has been authorized to act as a lobbyist for the principal whom the lobbyist represents under s. [13.65](#). Except as authorized under s. [13.621](#), no principal may authorize its lobbyist to engage in lobbying until the lobbyist is licensed and the principal is registered under s. [13.64](#).

Under this statute, the following steps are required. First, the lobbyist must be licensed, and the principal must be registered. Second, the lobbyist must be authorized to lobby for the principal. After those things occur, the lobbyist may engage in lobbying.<sup>1</sup>

The following definitions are pertinent to the analysis of this opinion:

- “Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period. [WIS. STAT. § 13.62\(11\)](#).
- “Lobbying” means 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\(10\)](#).

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<sup>1</sup> [WIS. STAT. § 13.65](#) establishes the lobbyist authorization process:

Before engaging in lobbying on behalf of a principal, a lobbyist or the principal who employs the lobbyist shall file with the commission a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist.

- “Lobbying communication” means an oral or written communication with any agency official, elective state official or legislative employee that attempts to influence legislative or administrative action, unless exempted under s. [13.621](#). [WIS. STAT. § 13.62\(10g\)](#).

Because the definition of “lobbyist” includes the terms “lobbying” and “lobbying communications,” it might be clearer if we restate the definition of “lobbyist” as follows:

“Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include

*attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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)*

on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to

*attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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),*

the individual is a lobbyist only if he or she makes

*oral or written communication with any agency official, elective state official or legislative employee that attempts to influence legislative or administrative action (unless exempted under s. 13.621)*

on each of at least 5 days within a reporting period.

At issue is the second sentence of the definition of “lobbyist.” This sentence creates an exception to the definition of “lobbyist” for individuals that have additional duties other than those that constitute “lobbying” and “lobbying communication.” Under the exception, an individual that has duties outside of “lobbying” is not a “lobbyist” and, therefore, is not required to obtain a lobbyist license and authorization until s/he has had 5 or more days of “lobbying communication” in a reporting period.<sup>2</sup> This exception requires that the Commission consider the individual’s duties to determine whether each duty is “lobbying.” The answer will necessarily depend on the facts of each situation.

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<sup>2</sup> There are two reporting periods each year. The first reporting period is from January 1 through June 30. The second reporting period is from July 1 through December 31. [WIS. STAT. § 13.62\(12r\)](#).

The person that will engage in these duties will be paid to “lobby” as that term is defined in statute. The question is whether the individual’s duties are not limited exclusively to “lobbying.” If even one of the duties listed is not considered “lobbying,” then the individual’s duties are not limited exclusively to “lobbying” and the principal is not required to authorize that individual until the fifth day on which the individual had “lobbying communication.”

Items 1-6 of the duties provided in your request include things like meeting with legislators, promoting policy priorities, reviewing bills and regulations, and providing counsel regarding testimony before the legislature or an agency. This includes preparation for the “lobbying” or “lobbying communications” that will occur. These duties are clearly lobbying as they show a direct attempt to influence legislative or administrative action by oral or written communication with an elective state official, agency official or legislative employee.

7. Provide insight and guidance on media opportunities related to the principal’s policy priorities. The target audience depends on the type of media opportunity. Sometimes the media opportunity targets Wisconsin residents to engage them on a grassroots level to get more involved in advocacy activities with the principal, and sometimes the opportunity aims to get specific legislator’s attention as well as the constituents in their district. The opportunities are all earned media and not paid for by the principal.

The additional details provided for item 7 clarify that at least a portion of this duty includes communications geared towards grassroots efforts. Grassroots efforts do not attempt to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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). In other words, grassroots efforts are not “lobbying.” Furthermore, “lobbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials,” is exempt from the lobbying subchapter.<sup>3</sup> To the extent that item 7 does not include lobbying communications intended for an audience made up principally of legislators or agency officials, it would not constitute “lobbying.”

8. Participate in coalition meeting/calls as necessary and appropriate. This usually includes other groups like the principal that work together on a common issue. This coalition does not include state officials or state employees. The meetings and/or calls could be either in preparation for lobbying communications or for internal or grassroots efforts.
9. Review and provide guidance on communications with volunteers and Board leaders of the principal. Communications to volunteers and Board leaders of the principal are usually to inform them on issues but depends on the circumstance.

The analysis of 8 and 9 are substantially similar and can be considered together. Additional details provided for item 8 states that it concerns grassroots efforts. Details provided for item 9 include

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<sup>3</sup> [WIS. STAT. § 13.621](#) establishes complete exemption from the lobbying subchapter for certain conduct. Sub. (1)(a) states:

Lobbying through communications media or by public addresses to audiences made up principally of persons other than legislators or agency officials.

communications with volunteers, which can be commonly understood as grassroots efforts. As discussed in the analysis for item 7, grassroots efforts are not lobbying. Therefore, to the extent that “participating in coalition meeting/calls as necessary and appropriate,” and “reviewing and providing guidance on communications with volunteers and Board Leaders of the principal,” include grassroots efforts and communication, items 8 and 9 are duties not exclusively limited to lobbying.

10. Other duties as necessary and agreed upon by both parties.

You speculated a duty in this category to be giving insight to the principal about upcoming elections. You also noted that this clause is infrequently relied on to expand upon a lobbyist’s duties.

Item 10 is much more open-ended. If item 10 includes providing insight about upcoming elections as speculated, it would not be a duty exclusive to lobbying because discussions and providing information regarding elections are not included in the definition of lobbying.

Similarly, sometimes lobbyists provide additional services to principals by way of serving as the treasurer of a registered political action committee, or administrator of a registered conduit. If item 10 includes advising on campaign finance laws or fulfilling reporting obligations for a registered committee or conduit, it would not be a duty exclusive to lobbying.

It is also not uncommon for lobbyists to serve as a principal’s organizer of grassroots advocacy efforts. Grassroots advocacy does not have its own definition in the [Merriam-Webster Dictionary](#). However, grassroots is defined as “the basic level of society or of an organization especially viewed in relation to higher or more centralized positions of power,”<sup>4</sup> and advocacy is defined as “the act or process of supporting a cause or proposal.”<sup>5</sup> Together, grassroots advocacy could be considered to be organizing the membership of an organization to show support for a particular cause or cause or proposal.

Organizing a principal’s grassroots advocacy efforts might include:

- Facilitating a lobby day at the Capitol for volunteers and members of the public to voice concerns directly to their legislators,
- Organizing volunteers to do outreach for causes that the principal has subscribed to,
- Providing guidance on social media usage to engage volunteers and members of the public,
- Encouraging members of the public to contact their legislators regarding causes that the principal has subscribed to.

If item 10 includes organizing a principal’s grassroots advocacy efforts, it would not be a duty exclusive to lobbying.

It is reasonable to expect that “other duties agreed upon by both partners” would include things not necessarily related to attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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). Therefore, to the extent that item 10 does not include solely other duties related to lobbying or lobbying communication, it can be considered a duty not exclusively limited to lobbying.

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/grassroots> (Last visited on January 30, 2020.)

<sup>5</sup> <https://www.merriam-webster.com/dictionary/advocacy> (Last visited on January 30, 2020.)

## Conclusion

It is the opinion of the Commission that items 1-6 of your request are duties exclusively limited to lobbying. Item 7 is likely exempt under [Wis. STAT. § 13.621\(1\)\(a\)](#). To the extent that items 8 and 9 include grassroots efforts, they are duties not exclusively limited to lobbying. In so far as item 10 includes tasks related to things other than lobbying or lobbying communications, it is a duty not exclusively limited to lobbying. Because one or more of the lobbyist's duties include things other than attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee (including 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), the lobbyist's duties overall are not exclusive to lobbying. Therefore, the lobbyist must be authorized by the fifth day of lobbying communication on behalf of the principal within a six-month reporting period.

**From:** [REDACTED]  
**To:** [Russell Caroline M - ETHICS](#)  
**Subject:** [REDACTED]  
**Date:** Thursday, September 26, 2019 3:25:51 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image002.png](#)

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Great. I would like to ask for an informal opinion on whether to following duties quality a person as “exclusive to lobbying” or “not exclusive to lobbying”.

Duties include:

1. Meet with legislators, agency professionals and administration leaders as needed to successfully promote the [REDACTED]’s policy priorities.
2. Regularly meet with [REDACTED] staff on policy priorities.
3. As needed, brief [REDACTED] volunteers and Board leaders on [REDACTED]’s policy priorities, legislative process, and political climate.
4. Review proposed bills and regulations that [REDACTED] may have an interest in and discuss position and potential engagement with [REDACTED].
5. Notify [REDACTED] staff of upcoming public hearings, particularly when [REDACTED] participation is optimal.
6. Provide counsel regarding testimony before the Legislature or state agency.
7. Provide insight and guidance on media opportunities related to [REDACTED] policy priorities.
8. Participate in coalition meeting/calls as necessary and appropriate.
9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.
10. Other duties as necessary and agreed upon by both parties.

Thanks!

[REDACTED]

**From:** [REDACTED]  
**To:** [ETH Lobbying](#)  
**Subject:** RE: Request for Advice Follow Up: Exclusive Lobbying  
**Date:** Tuesday, November 12, 2019 9:06:52 AM  
**Attachments:** [image004.png](#)  
[image001.png](#)

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Hi Caroline,

Sorry for the delay. You caught me at a very busy time.

Here are responses to your questions below. I hope this is helpful.

[REDACTED]

8. Participate in coalition meeting/calls as necessary and appropriate.

What is the coalition?

A: Not a particular coalition. Usually other groups like [REDACTED] working together on a common issue.

Are any of the people involved state officials or state employees?

A: No.

Are the meetings/calls in preparation for lobbying communication or attendance at hearings or meetings to have lobbying communication? Alternatively, are the meetings/calls internal or for grassroots efforts?

A: Could be for either or both.

9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.

Are the [REDACTED] communications aimed solely at [REDACTED] volunteers and [REDACTED] Board leaders?

Can you describe what these communications might look like?

A: It depends on the circumstance but usually to inform them on issues.

10. Other duties as necessary and agreed upon by both parties.

Would these "other duties" be frequent? Can you give a few examples of other duties that would be performed by the lobbyist, or hypothetical ones that may have been discussed?

A: I can't think of anything that falls into this category - maybe something like insight on upcoming elections. I don't think we've ever relied on this clause to actually expand their responsibilities.

[REDACTED]

**From:** ETH Lobbying <ETHLobbying@wisconsin.gov>  
**Sent:** Monday, November 11, 2019 3:56 PM  
**To:** [REDACTED] <[REDACTED]>  
**Subject:** RE: Request for Advice Follow Up: Exclusive Lobbying

**\*\*\* CAUTION:** This email originated from outside of the [REDACTED]. Do not click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

Hi [REDACTED],

Touching base on this one last time.

Thanks,

*Caroline M. Russell*

Ethics Specialist

**Wisconsin Ethics Commission**

Campaign Finance | Lobbying | Ethics

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

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**From:** [REDACTED] <[REDACTED]>  
**Sent:** Monday, November 4, 2019 8:22 PM  
**To:** ETH Lobbying <ETHLobbying@wisconsin.gov>  
**Subject:** RE: Request for Advice Follow Up: Exclusive Lobbying

Hi Caroline,

I did see your email. Sorry for the delay. I'm swamped with an advocacy day and a big public hearing this week. I'll respond later in the week when I have time to breath again.

[REDACTED]

[REDACTED]

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**From:** ETH Lobbying <[ETHLobbying@wisconsin.gov](mailto:ETHLobbying@wisconsin.gov)>  
**Sent:** Monday, November 4, 2019 2:33 PM  
**To:** [REDACTED] <[REDACTED]>  
**Subject:** RE: Request for Advice Follow Up: Exclusive Lobbying  
**Importance:** High

**\*\*\* CAUTION:** This email originated from outside of the [REDACTED]. Do not click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

Hi [REDACTED],

I wanted to touch base with you about the below email to see if you've received it. I would like a little but more information to better formulate advice. Please let me know if you have any questions.

*Caroline M. Russell*

Ethics Specialist

**Wisconsin Ethics Commission**

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**From:** Russell, Caroline M - ETHICS  
**Sent:** Tuesday, October 29, 2019 1:55 PM  
**To:** [REDACTED] <[REDACTED]>  
**Subject:** Request for Advice Follow Up: Exclusive Lobbying

Hello [REDACTED],

I am currently working on the request for advice that you sent in the end of September. To better assess whether certain duties of a lobbyist qualify as "exclusive to lobbying," I would like to ask you some follow up questions, specifically about duties 8, 9 and 10 of your request. I have laid out the duties and the follow-up questions beneath:

8. Participate in coalition meeting/calls as necessary and appropriate.  
What is the coalition? Are any of the people involved state officials or state employees? Are the meetings/calls in preparation for lobbying communication or

attendance at hearings or meetings to have lobbying communication?  
Alternatively, are the meetings/calls internal or for grassroots efforts?

9. Review and provide guidance on [REDACTED] communications with [REDACTED] volunteers and Board leaders.

Are the [REDACTED] communications aimed solely at [REDACTED] volunteers and [REDACTED] Board leaders? Can you describe what these communications might look like?

10. Other duties as necessary and agreed upon by both parties.  
Would these "other duties" be frequent? Can you give a few examples of other duties that would be performed by the lobbyist, or hypothetical ones that may have been discussed?

Thank you in advance for any additional insight you can provide regarding my questions. As a reminder, we are preparing your request for the Commission to review at its meeting on December 3, 2019, and will promptly follow up with you afterwards.

In the meantime, if you have any questions, please let me know.

*Caroline M. Russell*

Ethics Specialist

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## 2020 ETH 03

### CAMPAIGN FINANCE – APPLICATION OF 50-PIECE RULE TO COMMUNICATIONS WITH PETITIONS SIGNATORIES AND NEWSPAPER ADVERTISEMENTS

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You are a state senator. You have asked for an advisory opinion regarding the application of [WIS. STAT. § 11.1205](#) (“the 50-piece rule”) to responses to petition signatories. You have also asked about your ability to place newspaper advertisements while under the 50-piece rule.

#### Summary:

The 50-piece rule is a content neutral statute. It does not concern itself with the contents of the message or the purpose for which the message is communicated. Rather, it is a blanket prohibition on the use of public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed during the campaign period. In the context of a petition that is sent directly to a legislator, the legislator may respond to each individual that has signed the petition as each petitioner has, by virtue of his or her signature, communicated their position on the subject of the petition. As such, it is the opinion of the Commission that responses to the petition’s signatories fit clearly within the statutory exception for answers to communications from constituents. In the context of a newspaper ad, it is the opinion of the Commission that the 50-piece rule would prohibit purchasing a newspaper ad if more than 50 individual newspapers are produced.

#### Analysis:

Concerning petitions, you advise that legislative offices receive petitions from time to time asking the lawmaker to support or oppose a bill. In your office, you have received a petition with 300+ signatures asking that you get a bill signed into law. The petition contains the name, signature, and municipality of each person that signed. You have provided the cover letter under which the petition was sent to you, the petition, and a page of signatures. With the information provided, you can identify which petitioners are your constituents and determine their mailing address. As a state legislator, it is important for you to be able to communicate with your constituents who contact your office. As a response to a petition is different than responding to individual letters, emails, phone calls, post cards, etc., you ask for specific guidance as to whether you would be allowed to respond to each petition signatory.

Concerning advertisements, you advise that you would be interested in using your state office account to buy newspaper ads in papers inside of your district, as well as one that is outside of the district that circulates to constituents within the district, to let voters know of your position and actions on the Governor’s recent call to special session. You further advise that, according to the FAQs in the Senate policy manual, the Chief Clerk’s Office is able to provide design and printing services for you. The policy manual provides that the Chief Clerk’s Office can provide these services concerning the following communications: “Communications that discuss a Senator’s legislative agenda, legislative achievements, constituent service, or legislative office; activities of the Senate; district community activities or information; current laws or regulations; public policy issues under debate; or other state government issues.” You advise that the intended ad(s) would fall under one or more of these categories.

Additionally, you inquire outside of the context of the special session, whether the following are permissible:

- Purchasing an ad to place your business card (also includes honoring holidays);
- Purchasing an ad to announce listening sessions;
- Purchasing an ad to promote constituent services performed by the office; or
- Purchasing an ad to discuss your agenda (e.g. your legislative newsletter or portions thereof).

Finally, concerning ads, you inquire whether the placement of an ad in a newspaper constitutes one piece under [Wis. Stat. § 11.1205](#) (“the 50-piece rule”).

Each of the inquiries above implicate Wisconsin’s 50-piece rule, which provides:

**(1)(a)** Except as provided in sub. [\(2\)](#), no person elected to state or local office who becomes a candidate for national, state, or local office may use public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material distributed after:

- 1.** In the case of a candidate who is nominated by nomination papers, the first day authorized by law for circulation of nomination papers as a candidate.
- 2.** In the case of a candidate who is nominated at a primary election by write-in votes, the day the board of canvassers issues its determination that the person is nominated.
- 3.** In the case of a candidate who is nominated at a caucus, the date of the caucus.
- 4.** In the case of any other candidate who is nominated solely by filing a declaration of candidacy, the first day of the month preceding the month which includes the last day for filing the declaration.

**(b)** This subsection applies until after the date of the election or after the date of the primary election if the person appears as a candidate on a primary election ballot and is not nominated at the primary election.

**(2)** This section does not apply to use of public funds for the costs of the following:

- (a)** Answers to communications of constituents.
- (b)** Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken.
- (c)** Communications between members of the legislature regarding the legislative or deliberative process while the legislature is in session.
- (d)** Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

This statute prohibits a person elected to state or local office, who becomes a candidate for a national, state, or local office from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material after the applicable date in [Wis. Stat. § 11.1205\(1\)\(a\)1.-4](#). As written, the statute provides a clear, bright-line rule. It does not consider the content of the materials or for what purpose it is being made or distributed.<sup>1</sup> This restriction applies

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<sup>1</sup> While state legislators are subject to the application of the public purpose doctrine, application of that doctrine is not within the purview of the Commission. In this case, the Chief Clerk provides guidance to members concerning

until the latter of either: the day after the primary, if the candidate loses the primary; or, if successful in the primary, the date after the election. The Legislature created four specific exceptions to the 50-piece rule. Specifically, a person elected to state or local office may use public funds for the costs of the following communications during the campaign period:

- Answers to communications of constituents;
- Communications where authorized or directed to communicate by specific law, ordinance, or resolution;
- Communications with members of the Legislature regarding the legislative or deliberative process while the Legislature is in session; or
- Communications not exceeding 500 pieces solely relating to the subject matter of a special or extraordinary session during the period from the date that the session is called or scheduled and 14 days after adjournment of the session.

## **Petitions**

You inquire whether you may reply to each of the 300+ individuals who signed the petition that was sent to you concerning a bill in the Legislature. You also inquire about whether you would be able to respond to other petitions that are sent to you. It would appear that, in this situation, you would be sending more than 50 pieces of substantially identical material using your office account to pay for the materials and distribution of those replies. In the absence of an applicable exception, the statute would prohibit you from using office funds for those replies.

The only exception implicated by your inquiry is the one for answering communications of constituents. The question is whether the petition is a communication from each of the petitioners or only the individuals who signed the cover letter. In order to answer this question, we must consider the nature of a petition. At its core, a petition is a written request to an official to take a certain position or action. Each person that has signed the petition is adopting the position of the petition by signing his or her name. In substance, it is not any different than a letter that is signed by multiple parties. The difference between a petition and a letter signed by multiple people is in form only. To treat them differently due to their form would be an absurd result.

Further, it is important to note that the statute does not require the constituent to request a response. In fact, it is not unusual for officials to receive communications from constituents that do not specifically ask for a response. Notwithstanding the lack of a request for a response, the official may determine that it is important to respond and provide additional information or insight. The fact that no response, other than taking the proposed action identified in the petition, is requested does not render that exception inapplicable. One of the most important responsibilities of an official is to communicate with his or her constituents. In the absence of express statutory language to the contrary, it does not matter whether each petitioner requested a response.

In light of the foregoing, it is clear that each petitioner has communicated with you. As such, you can respond to each petitioner under the exception for providing answer to communications of constituents. If you have questions concerning the content of the communications and whether the

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what are appropriate uses of public funds. To the extent that there is a question about whether the content of a particular message and whether public funds could be used to distribute those messages, we leave those determinations to the appropriate individuals in the Legislature.

expenditure of public funds for those messages would be allowed, we encourage you to consult with the Chief Clerk and other appropriate staff and legislative leadership.

## Advertisements

The first portion of the inquiry concerns whether you may take out advertisements in a newspaper to discuss the recent special session that was called by the Governor. The Governor called a special session on guns for November 7, 2019. The Legislature convened that day and adjourned the special session. This implicates the following exception to the 50-piece rule:

“Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.” [WIS. STAT. § 11.1205\(2\)\(d\)](#).

The exception would have allowed for up to 500 pieces of communication relating solely to the subject of the special session from the date that the special session is called or scheduled until 14 days after the session is adjourned. In this case, that window has now closed. However, because there is the possibility of future special sessions while you are subject to the 50-piece rule, you asked us to address how that exception would be applied.

Additionally, you asked if under the 50-piece rule, generally, you would be allowed to purchase the following types of ads in a newspaper:

- An ad placing your business card in the newspaper (which could be part of a special edition, such as a Salute to Veterans on Veteran’s Day);
- Notice of listening sessions, roundtables, and other similar events where the public is invited to attend;
- An ad promoting the constituent services performed by the office; or
- An ad, such as your legislative newsletter (or parts thereof), discussing your agenda.

As noted above, the 50-piece rule does not contemplate the contents of communications. Rather, it simply prohibits a person elected to state or local office, who becomes a candidate for national, state, or local office from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during the campaign period. Each of the types of ads you have inquired about are all newspaper ads. As such, the answer to your questions turn on the question of how to count the placement of a newspaper advertisement.<sup>2</sup> It is the opinion of the Commission that, in the case of a newspaper advertisement, there is an individual piece for each printed copy of a newspaper that is produced. Therefore, a newspaper ad would violate the 50-piece rule if there are more than 50 individual newspapers produced.

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<sup>2</sup> Before answering this question, it is important for us to distinguish this question from application of our recent guidance concerning electronic media. Due to the nature of the guidance concerning electronic media, the advice issued in that context is limited to just the realm of electronic media. When considering communications while under the 50-piece rule, an official should make sure to analyze the considerations for each type of media the official is contemplating using for communication. In many instances, electronic media may be treated differently than physical media.

**From:** [REDACTED]  
**To:** [Carlton, Daniel - ETHICS](mailto:Daniel.Carlton@wisconsin.gov)  
**Subject:** RE: Formal Opinions  
**Date:** Wednesday, November 6, 2019 11:44:52 AM

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Thanks, Dan. Absolutely be happy to answer any questions whenever you need it.

Appreciate all the time you've invested.

Best,

[REDACTED]

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**From:** Carlton, Daniel - ETHICS <Daniel.Carlton@wisconsin.gov>  
**Sent:** Wednesday, November 6, 2019 9:39 AM  
**To:** [REDACTED]  
**Subject:** RE: Formal Opinions

Good morning, [REDACTED]!

I think that I have enough information here to get something put together. There's a good chance that I may still have some follow-up questions. If I do, I'll be in touch. Regardless of whether I have follow-ups, we'll definitely get this ready for the December 3<sup>rd</sup> meeting.

In the meantime, if you have any questions or any other information, please don't hesitate to touch base with me.

Thanks,

Dan

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**From:** [REDACTED]  
**Sent:** Tuesday, November 5, 2019 7:01 PM  
**To:** Carlton, Daniel - ETHICS <[Daniel.Carlton@wisconsin.gov](mailto:Daniel.Carlton@wisconsin.gov)>  
**Cc:** [REDACTED]  
**Subject:** Formal Opinions

Thanks again for your time last Friday. We would like to move forward to obtain 2 opinions from the Commission.

Since [REDACTED], we are under the 49-piece rule. However, a few issues have come up and we're seeking formal guidance from the Commission as it relates to two issues:

(1). Our ability to respond to our constituents who sign petitions; and

(2). Our ability to place newspaper advertisements

**Petitions:**

On the question of petitions. Legislative offices receive petitions from time to time asking the lawmaker to support or oppose a bill. In our office, we received 300+ signatures asking that Senator [REDACTED] get Senate Bill 100/Assembly Bill 114 signed into law. The petitions contain the name, signature, and municipality of each person that signed. In the attached scan, you can get an idea of what we were sent. There's a cover letter from two pharmacists who explain their concerns and those of their patients who signed the petition, there's a copy of the petition with the letter written to both Representative [REDACTED] and Senator [REDACTED], and the final is an example of the back page of the petition which contains the signatures. You had asked how we could identify from this petition who our constituents are and where they reside. I shared that we have a database called Forward that was created by our Legislative Technical Services Bureau (LTSB) many years ago. This database contains contact information for our constituents in the [REDACTED] Senate District. LTSB does update it with voter records, etc. It is easy to determine street address and zip code of those signing the petition by searching for their name.

What concerns Senator [REDACTED] most about being under the 49-piece rule is any inability to connect with constituents who directly contact [REDACTED] office. Direct contacts usually come in the form of letters, emails, phone calls, individual post cards, conversations he has at events and out in the community, and/or petitions (or so we believed). When I phoned the Senate Chief Clerk's Office, I asked if our office could respond to these constituents that not only printed their names but signed their names on the petitions. The Clerk thought it would be acceptable but also provided a counter-argument that if we drew a complaint, he wasn't sure how it would be resolved.

Last Friday you were very generous with your time and said that you would suggest we seek a formal opinion since there is no clear statutes, guidelines, or practices relating to petitions. The question being are these petitions a direct communication with our office?

**Advertisements:**

When we spoke last Friday, it was on the following email we sent you:

*The senator would be interested in using [REDACTED] state office account to buy newspaper ads in papers inside [REDACTED] district, as well as one outside the district that circulates to constituents within the district, to let voters know of [REDACTED] position and actions on the governor's recent call to special session.*

*The senator understands that because [REDACTED] is able to circulate nomination papers for a campaign in which [REDACTED] is engaged, it would have to be done within the 50-piece rule exception that allows for 500 pieces on a topic regarding a special session called by the governor (see statute 11.1205(4)(2)(d)).*

*Under the Senate policy manual FAQs, the chief clerk's office is able to provide design and printing services for the senator: "Communications that discuss a Senator's legislative agenda, legislative achievements, constituent service, or legislative office; activities of the Senate; district community activities or information; current laws or regulations; public policy issues under debate; or other state*

government issues" (p. 24).

*The intended ad would fall under these categories outlined on page 24 of the Senate policy manual, which are named appropriate state business. The policy manual does not disallow the use of an office account to buy newspaper ads of this nature.*

*It is vital that the senator be able to communicate with [REDACTED] constituents on these important issues that impact them. Would buying these newspaper ads regarding special session be allowed under the ethics statutes? We'd respectfully request a timely answer given the short window allowed in statute 11.1205.*

Special session will almost certainly be adjourned, but the Governor does have the ability to call another special session related to guns or any topic he wants, so still curious about our ability to purchase ads for the special session.

Outside of the special session, we would like some guidance on purchasing ads in general.

- Is it okay to purchase an ad to place the Senator's business card? The ad could be part of a special edition (Salute to Memorial Day, Veteran's Day, July 4<sup>th</sup>, etc.) or just appear in the regular newspaper.
- Okay to announce listening sessions, to announce a meeting that the public is invited to (example: a Cabinet Secretary will be visiting the district to discuss issues related to their agency that the Senator organizes), a law enforcement roundtable, etc.?
- Okay to promote constituent services performed by the office?
- Okay to discuss [REDACTED] agenda? Such as pieces of [REDACTED] legislative newsletter or the legislative newsletter in its entirety?

In the 2018 Campaign Season Guidelines for Senators and Staff, page 19, FAQ last question states that, "purchasing one ad (ad in a newspaper for an upcoming town hall), counts as one. The Senate Chief Clerk states that the Ethics Commission says ads count as one against the 49.

Could the Commission kindly provide their opinion.

Kind thanks in advance.

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Senator 

As an independent pharmacist I get to know our patients and create relationships with them. And for those who are battling an illness or chronic disease I know how critical their medications are to their overall health.

Daily I hear patient stories about prescription costs that would break your heart.

I hear from cancer patients who have to pay a higher out-of-pocket cost for using their insurance rather than paying the lower, uninsured rate, because I am prohibited by a "gag clause" required by Pharmacy Benefit Managers (PBMs) from informing them there could be a lower price option for them.

I hear from elderly patients, who have been utilizing our pharmacy for years, that are now required to order excessive supplies of their medicine and wait up to 10 days to get their prescriptions filled via mail-order.

And I see patients having to make the painful decision as to whether to even have their prescriptions filled, as the cost of medications are drastically increasing, while the PBMs pocket savings meant for consumers.

Last year we started a petition to ask our state legislators to create laws to crack down on this bad policy. We need even stronger regulations on insurers and their PBMs who have allowed this system to get wildly out of control, charging consumers more for prescription drugs by inflating costs and ultimately limiting accessibility. Things need to change quickly because for Wisconsin residents, especially those with chronic conditions, the clock is ticking.

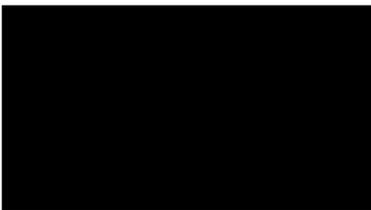
More than 11,000 people statewide have signed this petition to say they've had enough of the PBMs and their practices and want them to be required to be more transparent. **Those who have signed this petition at my store, in your district, are attached.**

2019 Senate Bill 100 and Assembly Bill 114 will hold PBMs accountable by requiring them to register with the state; establishing price transparency requirements and eliminating intimidating gag clause provisions in PBM contracts with pharmacies, pharmacists, or health benefit plan sponsors. The bills also require PBMs to ensure patients are not denied coverage during a plan year if their medication/device was covered when the participant enrolled or renewed their coverage - often called non-medical switching. 97 cosponsors have signed onto the bi-partisan legislation supporting regulation of the PBMs. Thank you for supporting this bill that will help lower prescription medicines and create a fairer marketplace.

On behalf of your constituents who have signed onto this petition, please help us get SB 100/AB 114 signed into law this session.

Please feel free to contact me with any questions.

Sincerely,



**CONSTITUENTS IN SUPPORT OF PBM TRANSPARENCY**

Dear [REDACTED]

Pharmacy benefit managers were first created as middlemen to reduce administrative costs for insurers, validate a patient's eligibility, administer plan benefits, and negotiate costs between pharmacies and health plans. Over time, PBMs have been allowed to operate virtually unchecked. A lack of transparency in PBM practices has led many states to implement licensure/registration, fair pharmacy audit, or generic drug pricing legislation to try to level the playing field for pharmacies and patients.

PBM practices that must be addressed in Wisconsin include secret pricing schemes to gouge customers on drug cost, inflated copays well over the cost of drugs, "gag clauses" silencing pharmacists in communicating to customers lower out of pocket options, and false advertising mailers to restrict patient choice of pharmacy and into mail order or big chain pharmacies.

The undersigned on this petition call on our Wisconsin State Legislators to enact comprehensive "PBM transparency" legislation for lower drug costs, better medical care, and access to our local independent pharmacies.

**Name**

**Signature**

**Municipality**

[REDACTED]

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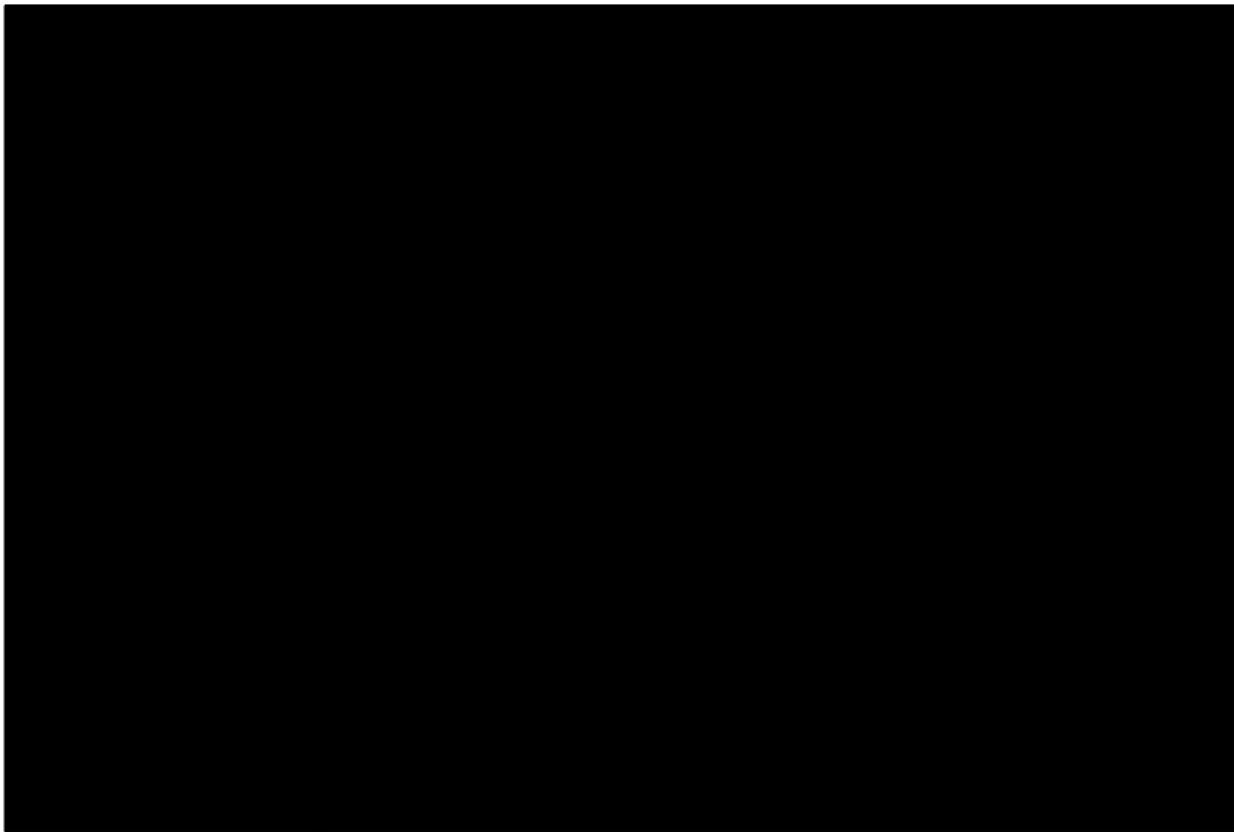


**CONSTITUENTS IN SUPPORT OF PBM TRANSPARENCY**

**Name**

**Signature**

**Municipality**



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# Wisconsin Ethics Commission

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

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**DATE:** For the Commission Meeting on February 25, 2020

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Colette Greve, Ethics Specialist

**SUBJECT:** Review of Ethics Opinions of Previous Boards –  
Use of Office and Solicitation

## 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 local and state public official use of office and solicitation on behalf of themselves or others. 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 two opinions be revised, one opinion be withdrawn, two opinions be reviewed by the Commission at today's meeting, and the remaining opinions (sixteen) in this group be reaffirmed.

[Eth. Bd. Op. 03-08](#) was on the agenda for the meeting on December 3, 2019, but was tabled until today's meeting. Staff's recommendation for this opinion is the last item in this memorandum.

### Relevant Statutes

The relevant statutory sections for these opinions are WIS. STAT. § [19.45\(2\)](#) and [\(3\)](#), [WIS. STAT. § 19.46\(1\)](#), and [WIS. STAT. § 19.59](#), but many of these opinions also reference and contain analysis under [WIS. STAT. § 19.42](#), which contains the definitions for the Code of Ethics. 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.

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*Wisconsin Ethics Commissioners*

Paul Connell | Mac Davis | David R. Halbrooks | Tamara Packard | Pat Strachota | Timothy Van Akkeren

*Administrator*

Daniel A. Carlton, Jr.

## **Opinions Recommended to be Withdrawn**

[Eth. Bd. Op. 03-04](#) – Staff recommends that this opinion be withdrawn as it lacks a clear set of facts and substantive analysis.

## **Opinions Recommended for Revision**

1. [Eth. Bd. Op. 98-12](#) – This opinion is regarding a legislator entering into a contract with a speakers bureau, under which the legislator would be placed on the speakers bureau’s list as an available speaker for speaking engagements and would receive a 25% commission of the speaking fee. The Ethics Board advised that if compensation was \$100.00 or less that the compensation would be presumed reasonable. Any compensation over \$100.00 the Commission would consider on a case-by-case basis, taking a number of factors into account, such as the payer and legislators relationship, the amount of preparation required, compensation paid to other non-public official speakers, the relative importance of the presentation, and the legislator’s history of speaking fees prior to taking public office. The only concern with this opinion is that it sets a presumption for compensation to be reasonable at \$100.00. As this was over 20 years ago, staff would like the Commission to determine if they still would like to set a monetary amount as presumed reasonable compensation or if this opinion should be revised to advise that these circumstances are always handled on a case-by-case by analyzing the factors listed in the opinion.

2. [Eth. Bd. Op. 92-23](#) – This opinion contains a reference to the old Chapter 11 statutes, specifically related to forming a referendum committee and whether a legislator may solicit on behalf of such committee. Staff recommends revising this opinion to remove this part of the advice. The campaign finance laws in Chapter 11 were rewritten in their entirety in 2015. An opinion that includes advice related to the previous version of Chapter 11 could create confusion in the advice given in the opinion.

## **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:

Eth. Bd. Ops. [95-07](#) and [03-16](#) – Specifically, the Ethics Board advice related to WIS. STAT. § 19.45(3), which provides as follows:

No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state 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 state public official. This subsection does not prohibit a state public official from engaging in outside employment.

The Ethics Board opined that this subsection operates regardless of whether the contributions solicited are directed to the official’s or another’s benefit. It is unclear from the statutory language if subsection (3) is meant to be applied to benefits of others or just the official. It seems that the issue the Board was trying to address was whether the thing of value given to the official *or* someone else could reasonably be seen to influence the official. It could be true in some circumstances that

something of value given to another could influence the official. Staff is asking for the Commission's opinion on whether these two previous opinions are taking too broad of a reading of subsection (3) by applying it to solicitations for another's benefit or if this is an accurate reading, interpretation, and analysis of the law.

**Opinion from previous Commission meeting**

[Eth. Bd. Op. 03-08](#) – Upon further review of this particular opinion tabled from the December 3, 2019, Commission meeting, staff believes that it does not have sufficient or substantial analysis provided in what it advises, and therefore, it should be withdrawn.

**Attachments:**

- A. Ethics Opinions Spreadsheet for February 25, 2020 Meeting

| Subject   | Opinion Number                     | Summary of opinion  | Staff Recommendation |
|---|------------------------------------|---|----------------------|
| Improper Use of Office; Legislators; Use of State's Time, Facilities, Supplies, Services                              | <a href="#">Eth. Bd. Op. 92-15</a> | The Board advises that statutes administered by the Ethics Board do not prevent a state legislator from using legislative staff and facilities to communicate with the news media about the legislator's lawsuits against the State of Wisconsin concerning issues involving the operation of state government. OEB 92-15 March 27, 1992  | Reaffirm             |
| Legislators; Improper Use of Office   | <a href="#">Eth. Bd. Op. 92-19</a> | Section 19.45, Wisconsin Statutes, does not prohibit a legislator from publicly opposing a proposed private project or from representing a person before a department if he or she receives no compensation therefore beyond the salary and other compensation or reimbursement to which the legislator is entitled by law, and neither the official, the official's family or an associated organization will financially benefit from the defeat of the proposal. OEB 92- 19 April 28, 1992   | Reaffirm             |
| Improper Use of Office; Influencing Official Judgment; Legislators; Lobbying and Lobbyists; Representation of Clients | <a href="#">Eth. Bd. Op. 93-04</a> | A legislator may not accept anything of pecuniary value from a lobbying principal. To the extent that a referendum committee is an intermediary, agent, or alter ego for a lobbying principal, a legislator should treat the referendum committee as if it were a lobbying principal and be guided by the advice given in 1992 Wis Eth Bd 26. A legislator should not bid or negotiate for, nor should anyone offer him or her, work on behalf of a referendum committee if it involves a matter on which the legislator is authorized to take any discretionary action unless the Legislature has completed its final action on that matter. Because referenda are part of the work of the Legislature, we recommend that a legislator not take pay to work on a referendum unless the legislator is confident that he or she can demonstrate that the employment is unrelated to being a member of the Legislature and is unlikely to influence the judgment the legislator exercises as a state official. OEB 93-4 (February 10, 1993) | Reaffirm             |
| Improper Use of Office; Judges  | <a href="#">Eth. Bd. Op. 94-08</a> | A municipal judge should not refer to his or her position as a municipal judge in private law firm letterhead. (OEB94-8)  | Reaffirm             |
| Improper Use of Office; Lobbying  | <a href="#">Eth. Bd. Op. 95-05</a> | Neither the Ethics Code nor lobbying law is an impediment to the production and airing of a videotape about a public official as long as the video production company can clearly and convincingly demonstrate that (1) the production is not at the behest of or initiation of the official and (2) editorial direction is independent of the official and others operating on his or her behalf, including his or her appointees and campaign committee. Neither the Ethics Code nor lobbying law is an impediment if the funding is appropriately treated as a campaign contribution, complies with the lobbying law's timing restrictions, and is permitted and reported under Wisconsin's campaign finance laws. OEB 95-5 (July 31, 1995)  | Reaffirm             |

| Subject  | Opinion Number                     | Summary of opinion   | Staff Recommendation |
|--|------------------------------------|--|----------------------|
| Improper Use of Office; Legislators; Meals, Lodging, Travel and Entertainment  | <a href="#">Eth. Bd. Op. 96-15</a> | A legislator may accept an offer from an organization funded by the federal and state governments to fly the legislator in its aircraft over the legislator's district, in the event of a disaster, so that the legislator can help in assessing damage and directing disaster relief to areas of greatest need. (November 13, 1996)   | Reaffirm             |
| Boards, Commissions and Agencies; Improper Use of Office                       | <a href="#">Eth. Bd. Op. 97-02</a> | The Ethics Board advises that a state public official associated with a state agency (1) not invest in a privately owned company unless the investment opportunity has been offered independent of the official's public position and (2) not use information gained through the official's public position, that is not available to the public, or has not been made public, as a substantial basis for the official's personal investment in a privately owned company. The Ethics Board also recommends that other individuals associated with the agency follow this advice. (June 27, 1997)  | Reaffirm             |
| Improper Use of Office; Lobbying Law   | <a href="#">Eth. Bd. Op. 97-04</a> | A legislator may use a library service offered to legislators by several public libraries only in connection with his or her legislative duties and responsibilities. (June 27, 1997)  | Reaffirm             |
| Improper Use of Office   | <a href="#">Eth. Bd. Op. 97-11</a> | The Ethics Board recommends that a state public official neither (1) hire or promote as an employee of the official's government office, nor (2) advocate the office's employment or promotion of, nor (3) exercise jurisdiction, supervision, or direction over the official's spouse. (September 29, 1997)   | Reaffirm             |
| Improper Use of Office   | <a href="#">Eth. Bd. Op. 98-08</a> | The Ethics Board advises that a member of the legislature may authorize a company to use the legislator's name and likeness in advertising tours that would include a meeting between the legislator and tour members, but recommends that a legislator permit this only so long as the legislator neither solicits nor accepts a campaign contribution or anything of substantial value from the company or individuals affiliated with it and that the company and individuals affiliated with it do not furnish campaign contribution or items of more than inconsequential value to the legislator and do not independently make campaign expenditures on the legislator's behalf. | Reaffirm             |
| Improper Use of Office; Use of State's Time, Facilities, Supplies and Services | <a href="#">Eth. Bd. Op. 98-12</a> | The Ethics Board advises that: (1) A legislator may enter into a proposed agreement with a speakers bureau, without restriction from laws administered by the Ethics Board; and (2) The legislator should be able to demonstrate that either (a) speaking invitations are unrelated to the legislator's use of office, including the title or prestige of office; or (b) compensation the legislator receives for a talk on state government issues, processes, or proposals is reasonable.  | Revise               |

| Subject  | Opinion Number                     | Summary of opinion  | Staff Recommendation |
|--|------------------------------------|---|----------------------|
| Improper Use of Office; Meal, Lodging, Travel, and Entertainment | <a href="#">Eth. Bd. Op. 99-11</a> | The Ethics Board advises: The responsibility for the care and use of grant funds lies in the first instance and primarily with the state agency that receives a grant. The agency's officials have broad discretion to identify the agency's interests and the means to further those interests. 1. State public officials. An agency's state public officials should strive to assure that the agency's expenditures related to an out-of-state event are not for their own personal advantage except to the extent any personal advantage is merely incidental to the officials' specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency, in contrast, for example, to expenditures for undefined or ill-defined or tenuously related "representational" responsibilities. 2. Spouses, companions, and family members. With rare exception, the public purpose doctrine and §§19.45 and 19.46, Wisconsin Statutes, foreclose officials from authorizing the travel of their spouses and other family members to events at state expense, even if the source of the public funds is a grant rather than taxes. An expenditure for this purpose merits close scrutiny. 3. Others. Because officials subject to the Ethics Code may not use their positions to obtain unlawful benefits for others, the Ethics Board encourages them not to authorize the payment of expense for travel for employees, employees' spouses, and others except as those expenses are in connection with specific activities at particular events in furtherance of substantial, well-articulated business purposes of the agency. | Reaffirm             |
| Improper Use of Office   | <a href="#">Eth. Bd. Op. 03-04</a> | The Ethics Board advises: Laws administered by the Ethics Board are not an impediment to the Legislature's reimbursing a legislator for costs the legislator incurred to purchase supplies for his or her legislative office.   | Withdraw             |
| Improper Use of Office - Legal Fees                              | <a href="#">2011 GAB 02</a>        | The Government Accountability Board advises that the Ethics Code bars legislators from accepting payment of attorneys' fees related to litigation of a redistricting map which has already been enacted into law.   | Reaffirm             |
| Local Officials - Improper Use of Office                         | <a href="#">2013 GAB 01</a>        | The Government Accountability Board advises that the city council member employed by the local business not vote on the zoning or conditional use permit matters associated with the business's current expansion plans. The Board further advises that the city council member whose spouse is employed by the business be mindful of the common law duty of undivided loyalty to the city when acting in an official capacity.  | Reaffirm             |

| Subject   | Opinion Number                     | Summary of opinion  | Staff Recommendation |
|---|------------------------------------|---|----------------------|
| Improper Use of Office; Legislators; Solicitation   | <a href="#">Eth. Bd. Op. 92-23</a> | a. A legislator should not solicit or accept contributions from any organization that employs a lobbyist. b. A legislator should not solicit or accept contributions of legal services or money to pay for legal services if the contributions could reasonably be expected to influence the legislator's judgment or actions or be considered a reward for past action. c. A legislator should not accept legal services or contributions to defray the legislator's legal expenses unless the legislator can demonstrate, clearly and convincingly, that the contribution is made primarily for a reason that is independent of holding a public office. d. A legislator may, consistent with the statutes the Ethics Board administers, solicit contributions permitted and reported under §11.23 and even use the title and prestige of office to do that. However, a legislator may not both use public position to solicit contributions to an individual or group under §11.23 and then permit the group to pay for legal costs the legislator incurs; to do so would be to use your official position to solicit a private benefit. OEB 92-23 June 16, 1992 | Revise               |
| Improper Use of Office; Legislators; Solicitation   | <a href="#">Eth. Bd. Op. 92-24</a> | A legislator should not solicit or accept contributions of legal services or money to pay for legal services if the contributions could reasonably be expected to influence judgment or actions or be considered a reward for past action. A legislator should not accept legal services or contributions to defray litigation expenses unless the legislator can demonstrate, clearly and convincingly, that the contribution is made primarily for a reason that is independent of the legislator's holding a public office. OEB 92-24 June 16, 1992  | Reaffirm             |
| Solicitation; Improper Use of Office; Officers, Directors, and Members of Organizations; Lobbying and Lobbyists | <a href="#">Eth. Bd. Op. 94-01</a> | A state public official may use his or her official letterhead to solicit contributions on behalf of a not-for-profit organization with which the official has no other connection. The solicitation should be structured so that it is evident that a contribution would be unlikely to influence the official's judgment. It would be unreasonable for anyone to believe the official's judgment would be influenced if the identities of who contributes and who does not are unknown to the official. The solicitation letter may not be sent to lobbyists or lobbying principals. OEB 94-1 (February 21, 1994)   | Reaffirm             |
| Boards, Commissions and Agencies; Influencing Official Judgment; Solicitation                                   | <a href="#">Eth. Bd. Op. 95-07</a> | Neither the lobbying law nor Ethics Code applies to every state agency employee. However, state employees are likely to report to, and act at the direction of, individuals subject to one or both of these statutes. Therefore, the Ethics Board advises that an agency may solicit and accept money from others to cover administrative expenses for its project as long as (1) individuals, businesses and organizations that are solicited for, or who make, contributions are not likely to be substantially affected by statutes and rules the agency administers and enforces; and (2) neither lobbyists nor organizations that employ lobbyists are solicited unless a specific exception pertains. OEB 95-7 (December 22, 1995)  | Commission Review    |

| Subject                                    | Opinion Number                     | Summary of opinion  | Staff Recommendation                     |
|--|------------------------------------|---|--|
| Improper Use of Office                     | <a href="#">Eth. Bd. Op. 03-11</a> | The Ethics Board advises that a state public official may proceed with a plan to have another solicit assistance for operation of the official's agency to the extent, but only to the extent, that the official could undertake the solicitation directly. Whether directly or through another acting at the official's behest, the official may not solicit contributions of money, goods or service either from a lobbyist or from an organization that employs a lobbyist or from anyone if either the contribution or the failure to contribute could reasonably be expected to influence the official's action or judgment or be considered a reward for the official's action or inaction. | Reaffirm                                 |
| Local Code - Influencing Official Judgment | <a href="#">Eth. Bd. Op. 03-16</a> | The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.  | Commission Review                        |
| Local Code - Disqualification              | <a href="#">Eth. Bd. Op. 03-08</a> | 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.   | From December 3, 2019 Meeting - Withdraw |



# Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics  
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**DATE:** For the Commission Meeting on February 25, 2020

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Ethics Commission Staff

**SUBJECT:** IT Projects Update

## Campaign Finance

Since the December 3, 2019 Commission meeting, Commission staff completed a statement of work with DOA's Division of Enterprise Technology (DET) to put the Massachusetts code in a test environment. This project will help staff to determine the usability of Massachusetts code for the eventual replacement of CFIS. DET is submitting weekly reports to staff, but progress has been limited due to slow responses from the IT staff in Massachusetts. The initial January 31, 2020 deadline has passed, and staff hope to have the code in a test environment in the next few weeks. Once the code is in a testing environment, staff can further evaluate if the code suites the technical and statutory needs of the Commission.

## Lobbying

All technical debt for the new [lobbying.wi.gov](http://lobbying.wi.gov) has been addressed. 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. The reporting tools to be used by lobbyists and principals are nearing completion. Staff will continue to work closely with WaMS as development continues. 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

The Commission's IT contractor, Kavita Dornala, is adding functionality so candidates will be able to file SEIs online. 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 should be able to use the new system beginning in April 2020 for the Fall 2020 elections.

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**DATE:** For the Commission Meeting on February 25, 2020

**TO:** Members, Ethics Commission

**FROM:** Ethics Commission Staff

**SUBJECT:** Ethics Commission Staff Report

## **Attorney General Opinion Request**

At the Commission meeting on December 3, 2019, the Commission decided not to pursue the opinion request pertaining to the constitutionality of the statutory provision authorizing the Commission to suspend a lobbyist's license under certain circumstances. Also, at that meeting, the Commission requested staff to prepare a new, more focused, opinion request concerning exempt status for campaign finance committees. Commission staff is working on preparing that request and will have a draft for the Commission's consideration at the meeting in June.

## **Commission Administration**

### Internal Controls and Accounting Audits

The Ethics Commission is required to annually review the internal controls for accounting and purchasing activities, and report any risks and measures taken to limit those risks to the Department of Administration's State Controller's Office (SCO). The report is due by March 31, 2020.

The Commission staff also participate in audits conducted by the SCO. Recent audits included the separation of duties audit, which indicates where users of the accounting system, STAR, may have roles to allow a user to both enter and approve a transaction. Due to the limited number of staff at the Commission, this has been a challenge in the past. Changes at the SCO have allowed roles to be removed so there are no longer any issues with the segregation of duties in the accounting system.

The Commission staff also participate in an annual attestation of roles in STAR. This process includes a review of all roles for all staff of the Commission and ensuring that assigned roles are necessary to conduct work processes. Any roles that are unnecessary are removed as part of this process, and then all users are attested to having the appropriate roles based on job duties. This process will be completed by March 13, 2020.

### Fiscal Estimates for 2019 SB 742 and 2019 AB 835

Commission staff prepared and submitted fiscal estimates and technical memos for 2019 SB 742 and 2019 AB 835. The estimate and memo for both bills were submitted on February 12, 2020. Due to the limited financial impact details in the bills, the estimates stated that an increase cost to the Commission was expected, but the amount was indeterminate.

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## Lobbying Request for Additional Spending Authority

The lobbying site redesign is still underway, with an expected completion date sometime this summer. At the December 3, 2019 Commission meeting, the Commission approved a staff request to submit to DOA and the legislature a request to increase spending authority in program revenue to complete payments for the project. The Commission approved increased spending authority up to the amount of \$50,000. Staff discussed the work completed to date, and the work that is yet to be completed this fiscal year. We anticipate submitting this request for increased spending authority this spring and expect the request to be approximately \$15,000. Once the public website goes live, staff and WaMS will shift their focus to administrative updates to the website. We currently expect expenses related to that work will be within existing spending authority for lobbying program revenue in fiscal year 2021.

## Training

Commission staff developed a training plan for late 2019 and in preparation for the local 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 associations 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 the very near future.

On February 5, 2020, Administrator Dan Carlton did a brief presentation on the basics of lobbying for the Wisconsin Insurance Alliance.

## **Campaign Finance**

### January Continuing 2020

The January Continuing 2020 reports were due January 15, 2020. There were 892 committees required to file. Twenty-five committees have not yet filed.

### Pre-Primary Spring 2020

There are 26 candidates for the Spring 2020 elections that are required to file campaign finance reports. Their first report was the Pre-Primary Spring 2020 report, which covered activity from January 1 through February 3, 2020. This report was due February 10, 2020. All 26 candidates have filed their report on time. Their next report will be the Pre-Election Spring 2020, which will cover from February 4 through March 23, 2020. That report will be due March 30, 2020.

## **Lobbying**

### 2019-2020 Legislative Session

As of February 5, 2020, there were 772 lobbying principals registered, 656 lobbyists licensed, and 1,653 lobbyist authorizations.

All audits for the July – December 2019 period of the 2019-2020 legislative session are under way.

Authorized lobbying compliance is at least 99%. Statement of Lobbying Activities and Expenditures (SLAE) compliance is at least 99% with only eight principals failing to file on the due date, and one lobbying principal failing to file within the two-business day no penalty window set out by the standard settlement schedule.

Statutes require each lobbying principal to submit a SLAE twice a year. The next deadline is July 31, 2020, which will cover activity from January 1 – June 30, 2020. 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 6-month legislative liaison report was due January 31, 2020. There are 90 state agencies that file, and as of February 10th, all but 5 had filed their reports. Staff will continue to follow up until all agencies have filed.

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

#### Statements of Economic Interests (SEIs)

As of February 10th, there were 2,350 total filers required to file an SEI for 2020. Notices went out to municipal judges and circuit court judges on the spring 2020 ballot on Monday, December 2nd. Notices to reserve judges were sent December 19<sup>th</sup>. Notices to all other filers went out on January 13th. The SEIs for annual filers are due by April 30<sup>th</sup>, 2020.

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

Candidates for the Fall 2020 election can file SEIs until Thursday, June 4, 2020, at 4:30 p.m.

#### State of Wisconsin Investment Board Quarterly Reports

The 2019 fourth quarter reports were due by January 31, 2019. All were received by February 3rd and referred to the Legislative Audit Bureau. The next quarterly reports will be due by April 30<sup>th</sup>, covering January 1<sup>st</sup> through March 31<sup>st</sup>.

