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**2022 ETH 01**  
CAMPAIGN FINANCE – REPORTING OF JOINT ADVERTISEMENTS

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You are an attorney for a statewide organization. You requested that the Commission provide advice on proper campaign finance reporting for joint express advocacy paid advertisements (“ad”). Specifically, you presented two scenarios listed below:

1. The cost of the advertising is split by the two campaign committees.
  - a. We assume each committee would report a disbursement equal to their committee’s actual cost.
  - b. Does each candidate committee also need to recognize an “in-kind” contribution from the other in this case? (If so, this seems to somewhat limit the ability of the committees to pursue such joint efforts since the contribution limit between two local candidate committees may be reached quickly.)
  
2. The cost of an ad is paid for by Candidate Committee A, but Candidate Committee B is consulted about and approves the ads, which say, “Vote for A and B.”
  - a. Presumably, Candidate Committee B needs to report an in-kind contribution, but in what amount—50% of the cost of the ad? 100%?
  - b. What about Candidate Committee A’s expenditure report? How would this committee reflect the expenditure?
  - c. It appears that the contribution limit between two local candidate committees would apply.

Additionally, you requested advice on how the potential in-kind contributions would affect contribution limits.

Summary:

It is the opinion of the Commission that when candidate committees purchase a joint ad and share the cost of such ad, there is an exchange of in-kind contributions between the candidate committees for the portion they did not pay. Similarly, when candidate committees agree to a joint ad and one candidate committee pays for the full cost for the other committee(s), there is an in-kind contribution disbursed by the candidate committee paying for the ad and an in-kind contribution being received by the other committee(s) participating in the joint ad. The exchanged in-kind contributions count towards the contribution limits. Additionally, the exchanged in-kind contributions must be considered in determining whether the committees will exceed the threshold to remain on exempt status.

**Analysis**

Applicable Law

Candidate committees are subject to reporting requirements in Wisconsin Statutes Chapter 11 and Wisconsin Administrative Code Chapter ETH 1. Before analyzing the applicable provisions of campaign finance law, there are several definitions that are important to know.

[Wis. STAT. § 11.0101\(8\)\(a\)](#)

**(8)**

(a) Except as provided in par. (b), "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 s. [11.1109](#), a transfer of tangible personal property or services to a committee, valued as provided under s. [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\(10\)\(a\)](#)

**(10)**

(a) "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.

[Wis. STAT. § 11.0101\(11\)](#)

(11) "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".
- (i) "Cast your ballot against".

The relevant statutory provisions are as follows:

[Wis. STAT. § 11.0104\(1\)](#)

**(1)**

(a) Except as provided in par. (b), any committee which does not anticipate accepting or making contributions, making disbursements, or incurring obligations, and any conduit which does not anticipate accepting or releasing contributions, in an aggregate amount exceeding \$2,000 in a calendar year may file an amended registration statement with the appropriate filing officer indicating that fact. The committee or conduit shall certify the amended registration in the manner required under s. [11.0103 \(3\) \(c\)](#) and shall include the information required to be reported by that committee or conduit on its continuing reports.

This statute provides that candidate committees may claim exempt status, meaning that the candidate committee will be exempt from filing campaign finance reports. This status is available to candidate committees which do not anticipate accepting or making contributions, making disbursements, or incurring obligations, and any conduit which does not anticipate accepting or releasing contributions, in an aggregate amount exceeding \$2,000 in a calendar year.

[Wis. STAT. § 11.0204\(1\)\(a\)](#)

**(1) Contributions and disbursements.**

**(a)** Each candidate, through his or her candidate committee, shall make full reports, upon a form prescribed by the commission and certified as required under s. [11.0103 \(3\) \(c\)](#), of all contributions, disbursements, and obligations received, made, and incurred by the candidate committee.

This statutory provision requires that candidate committees report all contributions and disbursements.

[Wis. STAT. § 11.1101\(2\)](#)

**(2) Candidate committees.** A candidate committee may contribute to another candidate committee no more than the following amounts specified for the candidate whose nomination or election the committee supports [See Figure 11.1101 following]:

**(h)** Candidates for local offices, an amount equal to the greater of the following:

- 1.** Five hundred dollars.
- 2.** Two cents times the number of inhabitants of the jurisdiction or district, according to the latest federal census or the census information on which the district is based, as certified by the appropriate filing officer, but not more than \$6,000.

This statute provides the contribution limits for contributions between candidate committees. Specifically for this case, the contributions limits for local candidates are provided above.

[Wis. STAT. § 11.1105](#)

**(1)** Except as provided in s. [11.1111](#), for purposes of complying with a contribution limit under this section, the value of a contribution of any tangible or intangible item, other than money, is the item's fair market value at the time that the individual or committee made the contribution.

**(2)** Except as provided in s. [11.1111](#), for purposes of complying with a contribution limit under this section, the value of a contribution of a service is the fair market value of the service at the time that the individual or committee made the contribution.

These statutory provisions provides that contributions of intangible items are given the value of the item or service's fair market value at the time the contribution is made.

[WIS. ADMIN. CODE ETH 1.20\(1\)](#)

**(1)** In this section:

**(a)** "Actual value" means the fair market value.

**(b)** "Authorized person" means a candidate, treasurer, agent, other person whom a candidate designates, or a person whom any other registrant designates to authorize a proposed in-kind contribution.

**(c)** "Contributor" means any individual or registrant who proposes to make an in-kind contribution.

**(d)** "Date of contribution" means the time as of which the benefit, of the thing of value given or of the service performed, is conferred upon the candidate's campaign or upon the registrant.

**(e)** "In-kind contribution" means a disbursement by a contributor to procure a thing of value or service for the benefit of a registrant who authorized the disbursement.

**(f)** "Registrant" has the same meaning as provided in s. [11.0101 \(6\)](#) and [\(7\)](#), Stats.

[WIS. ADMIN. CODE ETH 1.20\(6\)](#)

**(6)** An in-kind contribution shall be reported as received and accepted by the candidate or registrant on the date that the benefit, of the material supplied or the service performed, is conferred upon the candidate or other registrant.

[WIS. ADMIN. CODE ETH 1.20\(9\)](#)

**(9)** Any registrant who makes or receives an in-kind contribution shall report the contribution on its campaign finance report.

These provisions require that candidate committees report in-kind contributions that they make or receive and instruct candidate committees on what date to use when reporting.

It is important to note that neither the statutes nor administrative code contemplate joint advertisements. The only type of sharing or joint efforts contemplated in the current statutes is in the context of polls.<sup>1</sup> Prior to the rewrite of the campaign finance statutes that occurred in 2015, the statutes did expressly contemplate shared fundraising. Before candidate committees engaged in such fundraising, the statutes required candidate committees to determine how to allocate the contributions and disbursements. It is not clear whether the statutes applied to joint ads that were not seeking contributions. This is no longer part of the statutes.

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<sup>1</sup> [WIS. STAT. § 11.1111\(5\)](#).

## Application

1. Is there a contribution? If so, what is contributed.

Candidate committees are required to report all contributions received and disbursements made.<sup>2</sup> This includes any in-kind contributions received or in-kind contributions made to other candidate committees.<sup>3</sup> A contribution is defined as any of the following:

1. A gift, subscription, loan, advance, or transfer of money to a committee.
2. With the committee's consent under s. [11.1109](#), a transfer of tangible personal property or services to a committee, valued as provided under s. [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.<sup>4</sup>

An in-kind contribution means a disbursement by a contributor to procure a thing of value or a service for the benefit of a registrant who authorized the disbursement.<sup>5</sup>

In scenario one of your request for advice, the advertisement cost is being split by two candidate committees. Each candidate committee is paying the vendor only half the cost of the ad. The question, then, is whether the unpaid half of the ad is an in-kind contribution to the other candidate committee. An in-kind contribution occurs when there is disbursement for something of value or a service for the benefit of the recipient with the recipient's consent. In this case, it is clear there is consent from each party, as they are jointly purchasing the ad. Each candidate committee will only be paying half the cost of the ad to the vendor. The ad would not have run without the full cost being paid. Each candidate committee will receive a thing of value, half of the cost of the ad, for its own benefit from the other candidate committee. As such, the Commission advises that when candidate committees purchase a joint ad and share the cost of such ad, there is an exchange of in-kind contributions between the candidate committees for the portion they did not pay.

Similar advice applies to a joint ad for which one candidate committee pays, but the ad is shared by two candidate committees. One candidate committee will have made a disbursement for the ad, which is also an in-kind contribution to the other candidate committee, as it is something of value for the benefit of that candidate committee, for which it did not make a disbursement. The candidate committee that paid the full amount will have made an in-kind contribution (non-monetary) to the other candidate committee for the full amount of the ad. The candidate committee that did not pay the vendor for the ad will be receiving an in-kind contribution (non-monetary) for the full amount of the ad.

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<sup>2</sup> [WIS. STAT. § 11.0204\(1\)\(a\)](#).

<sup>3</sup> [WIS. ADMIN. CODE ETH 1.20\(6\)](#) and [\(9\)](#).

<sup>4</sup> [WIS. STAT. § 11.0101\(8\)\(a\)](#).

<sup>5</sup> [WIS. ADMIN. CODE ETH 1.20\(1\)\(e\)](#).

## 2. How are the transactions reported?

The two scenarios you have requested advice for involve two candidate committees. This opinion will refer to the candidate committees as “Committee A” and “Committee B.” For purposes of this opinion, the value assigned to the ad will be \$500.00. It is important to note that in practice, the value of the ad is something that should always be known, as it is the actual value/fair market value the vendor charges for the ad.

### Scenario One Reporting

In scenario one, a \$500.00 joint ad, encouraging support for each candidate committee, is split evenly by Committee A and Committee B. Committee A and B each make a disbursement to the vendor for half of the cost of the ad. Each Committee will report a \$250.00 disbursement to the vendor supplying/producing the ad in their campaign finance report covering that period of time.

To report the in-kind portion of the transaction, the Committees must each report an in-kind contribution received from the other Committee, and an outgoing in-kind disbursement to the other Committee. For example, Committee A will report an in-kind contribution of \$250.00 received from Committee B, as well as an in-kind disbursement of \$250.00 to Committee B. Committee B will report likewise.

### Scenario Two Reporting

In scenario two, the \$500.00 ad is paid for entirely by Committee A. Committee B is consulted about the ad and approves and accepts it. The ad is still a joint ad encouraging support for both Candidate A and B. Committee A should report a disbursement of \$500.00 to the vendor for the ad. The disbursement for the ad is also an in-kind contribution of \$500.00 to Committee B, as it is something of value for the benefit of Committee B, for which Committee B did not make a disbursement. Therefore, Committee A should also report a disbursement of a \$500.00 in-kind, non-monetary contribution to Committee B.

Committee B is not making any disbursement for the ad, but it is accepting the ad from Committee A. Committee B is receiving an in-kind contribution, because it is receiving value from the ad. Committee B will report receiving an in-kind contribution of \$500.00.

When reporting the in-kind contribution, Committee B will report both an in-kind contribution of \$500 and an in-kind disbursement of \$500. Committee B must report the disbursement to off-set the contribution, as it is a receipt of something of value, not a monetary contribution. This maintains an accurate cash balance on its reports.

### Contribution Limits

Your request also seeks advice on the contribution limits application using the same two hypotheticals. For purposes of this opinion, we will assume the contribution limit for the local office is \$500.00 and that Committee A and Committee B have never contributed to one another.

In each scenario the candidate committees will be subject to contribution limits for candidate committees. Specifically, the limits for local candidate committees will be applicable. The limits are as follows:

**(h)** Candidates for local offices, an amount equal to the greater of the following:

1. Five hundred dollars.
2. Two cents times the number of inhabitants of the jurisdiction or district, according to the latest federal census or the census information on which the district is based, as certified by the appropriate filing officer, but not more than \$6,000.<sup>6</sup>

Your request did not include offices/districts of the candidates and committees in question, so the Commission cannot advise on the exact amounts for contribution limits. However, the Commission can advise that in-kind contributions count towards the contribution limits. The value of a non-monetary contribution, such as something tangible or intangible or a service, is its fair market value.<sup>7</sup>

For purposes of this opinion, we will assume the contribution limit is \$500.00 and there have been no contributions between the two candidate committees. In scenario one, there is no contribution limit violation. In this scenario there was an exchange of in-kind contributions between the two candidate committees. Committee A contributed \$250.00 to Committee B, and Committee B contributed \$250.00 to Committee A. Each candidate committee may still contribute \$250.00 to the other.

In scenario two, Committee A made a \$500.00 contribution and has reached the limit. Committee B did not contribute to Committee A. Committee B will be reporting a disbursement of \$500.00, but this is only for accounting purposes to offset the incoming contribution being reported. It will not count towards the contribution limit for Committee B giving to Committee A.

## **Conclusion**

It is the opinion of the Commission that when candidate committees purchase a joint ad and share the cost of such ad, there is an exchange of in-kind contributions between the candidate committees for the portion they did not pay. Similarly, when candidate committees agree to a joint ad and one candidate committee pays for the full cost for the other committee(s), there is an in-kind contribution disbursed by the candidate committee paying for the ad and an in-kind contribution being received by the other committee(s) participating in the joint ad. The exchanged in-kind contributions count towards the contribution limits. Additionally, the exchanged in-kind contributions must be considered in determining whether the committees will exceed the threshold to remain on exempt status.

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<sup>6</sup> [WIS. STAT. § 11.1101\(2\)\(h\)](#).

<sup>7</sup> [WIS. STAT. § 11.1105](#).

## Greve, Colette - ETHICS

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**From:** [REDACTED]  
**Sent:** Monday, November 15, 2021 1:04 PM  
**To:** WI Campaign Finance  
**Cc:** [REDACTED]  
**Subject:** Joint ads by two candidate committees...

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

Hello,

A [REDACTED] preparing for their role as a filing officer presented the following question regarding the proper campaign finance reporting procedures when two candidate committees issue paid advertising that supports both candidates (e.g., an advertisement that encourages voters to vote for both Candidate A and Candidate B).

The two scenarios:

1. The cost of the advertising is split by the two campaign committees.
  - a. We assume each committee would report a disbursement equal to their committee's actual cost.
  - b. Does each candidate committee also need to recognize an "in-kind" contribution from the other in this case? (If so, this seems to somewhat limit the ability of the committees to pursue such joint efforts since the contribution limit between two local candidate committees may be reached quickly.)
  - c. Any other guidance, recommendation, or resources?
2. The cost of an ad is paid for by Candidate Committee A, but Candidate Committee B is consulted about and approves the ads, which say, "Vote for A and B."
  - a. Presumably, Candidate Committee B needs to report an in-kind contribution, but in what amount—50% of the cost of the ad? 100%?
  - b. What about Candidate Committee A's expenditure report? How would this committee reflect the expenditure?
  - c. It appears that the contribution limit between two local candidate committees would apply.
  - d. Any other guidance, recommendation, or resources? Would Candidate Committee A need to modify its registration to "advocate" for Candidate B?

Or, is the whole premise somehow problematic such that two candidate committees can't really do these things?

Thanks in advance for any information you can provide about such joint campaigning.

