

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Contributions of \$100 or less received in the form of a check drawn on a joint checking account may be assumed to be from the signer of the check absent evidence to the contrary. Contributions over \$100 received in the form of a check drawn on a joint checking account may not be assumed to be from the signer of the check absent evidence to the contrary; instead, the treasurer must affirmatively inquire as to whom the contribution is from. Contributions received in the form of a check drawn on a partnership checking account may not be assumed to be from the signer of the check. The treasurer has a duty to ascertain the identity of the contributor in such instance. Reproduction of personal correspondence by means of a magnetic card typewriter constitutes reproduction by machine. An organization may, pursuant to §11.29 (1), Stats., send nomination papers to its members without reporting such activity. (Issued to Keith R. Clifford, December 19, 1975)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was revised to require treasurers to affirmatively inquire whom a contribution in excess of \$100 was from if the contribution was drawn on a joint account. The opinion below was reaffirmed by the Government Accountability Board on May 5, 2008 and fully incorporates the revisions directed by the G.A.B.

Opinion:

You have requested the Board's opinion on four questions. First, you ask whether you may assume, absent evidence to the contrary, that when a contribution is received in the form of a check drawn on a joint checking account, the contribution is from the signer of the check and report it as such.

It is the Board's opinion that you may assume, absent evidence to the contrary, that a contribution received in the form of a check drawn on a joint checking account, is from the joint tenant who signed the check and report it as such if the amount of the contribution does not exceed \$100. If the contribution exceeds \$100, you must affirmatively inquire whether the contribution is from the individuals listed on the joint account. The contributor should be advised to designate on the memo portion of the check whether or not it is a joint contribution.

Secondly, you ask whether you may treat contributions in the form of a check drawn on a partnership account in the same way as a check drawn on a joint checking account.

It is the Board's opinion that you may not. No assumption may be made that the signer of a check drawn on a partnership account is the contributor. It is the duty of the treasurer to ascertain from whom the contribution is received. In addition, the treasurer must indicate when reporting that a contribution is from a partnership if the check is drawn on a partnership account.

Third, you ask "(m)ay individuals at their own expense write to friends and associates regarding the candidacy of a candidate with letters typed on magnetic card typewriters." You indicate that the body of the letter is typed from a magnetic card and that the inside address and envelope

have to be typed individually and ask whether "this procedure (would) be regarded under the law as 'mechanical reproduction'."

Sections 11.01 (5)(g) 4. and 11.01 (6)(d) 3., Stats., specifically exclude from the definitions of contribution and disbursement "(t)he costs of preparation and transmission of personal correspondence, provided such material is not reproduced by machine for distribution.... "

It is the Board's opinion that reproduction of personal correspondence by means of a magnetic card typewriter or a computer's mail-merge or search and replace function constitutes reproduction by machine and, hence, the costs of preparation and transmission of personal correspondence for a political purpose by such means is properly included in the definitions of contribution and disbursement. However, individuals acting in concert with a candidate/committee may do this provided the costs involved are reported by the candidate/committee as "in-kind" contributions and disbursements. When so acting, the identification requirements of §11.30 (2), Stats., apply.

Fourth, you ask whether an organization may send to its members nomination papers and return envelopes provided and paid for by a personal campaign committee without such activity on the part of the organization being considered a contribution.

Section 11.29 (1), Stats., provides: "Nothing in this chapter restricts any corporation, cooperative or voluntary association other than a political party or personal campaign committee from making disbursements for the purpose of communicating only with its members, shareholders, patrons or subscribers to the exclusion of all other persons, with respect to endorsements of candidates, positions on a referendum to be submitted to the voters or explanation of its views or interests, without reporting such activity. No such corporation, cooperative or voluntary association may solicit contributions from persons who are not members, shareholders, patrons or subscribers to be used for such purposes."

It is the Board's opinion that the sending of nomination papers would constitute an endorsement of a candidate and, hence, would fall within the ambit of non-reportable activity listed in §11.29 (1), Stats.