

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Establishment and administration of separate segregated funds under §11.38 (1)(a) 2., Stats., discussed. (Issued to Richard S. Gallagher, December 19, 1975)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on October 6, 2008. Readers are also directed to GAB §1.06, Wis. Admin. Code, and Chapter 328, Laws of 1979, which specify reporting requirements for corporations.

Opinion:

You have requested the Board's opinion on a number of questions and have asked the Board to base its opinion on the following facts and assumptions:

Specifically, it is requested that the State Elections Board address itself to a situation in which a voluntary non-profit unincorporated political organization is formed by certain employees and/or officers of a corporation for the purpose of creating a committee or group which will constitute a separate segregated fund. The members of such voluntary association may consist of some or all persons who contribute to the fund, only the initial members and such other persons as the initial members may appoint as their successors, or such persons as the establishing corporation through its management may select from time to time (including the right to name the original members and replace one or all of them). The officers of such fund may be appointed by the management of the establishing corporation. It should be assumed that such fund will be independent of any political party, candidate or organization (other than the circumstances outlined above regarding possible methods of choosing members or officers), except that the establishing corporation will defray the costs and expenses incurred in soliciting contributions to the fund (to the extent of no more than \$500 annually) and in administering the fund. It should be assumed that such fund may solicit contributions from individuals who may be shareholders, officer's, directors, or full or part-time hourly or salaried employees of the establishing corporation or any of its subsidiaries. Participation in such a program would be entirely voluntary and would not be encouraged or secured by job discrimination or financial reprisal, or as a condition of employment by the corporation or any of its subsidiaries. It should be assumed that such segregated fund would make contributions to candidates and their committees, state and local committees of political parties, and other political committees within applicable contribution limits. It should also be assumed that such separate segregated fund would solicit contributions in a manner which is completely lawful under all applicable provisions of Wisconsin law. Finally, it should be assumed for purposes of this opinion that, if such fund has activities outside the State of Wisconsin, such fund will comply with and be separately subject to any applicable Federal election laws and any applicable election laws of any state or states other than Wisconsin.

First, you ask whether "(t)he corporate establishment of a segregated fund includes the right of corporate management to appoint and remove ... the members and/or officers of such a segregated fund, including the treasurer."

It is the Board's opinion that the right to "establish" a segregated fund implies the right to appoint and remove the members and/or officers thereof.

Second, you ask whether there is any limitation on the individuals who may be solicited for contributions by such a fund.

It is the Board's opinion that there is no restriction on who may be solicited except, of course, a corporation or association organized under ch. 185, Stats.

Third, you ask whether there is any limitation on the amount of money which may be spent by a corporation in connection with the "administration" of its segregated fund.

It is the Board's opinion that there is no limitation on the amount which may be spent by the corporation for administering the fund.

Fourth, you ask for guidelines regarding the distinction between "administration" and "solicitation."

The Board has expressed itself on this question and refers you to El. Bd. Op. 75-3.

You also request that the Board clarify methods of accounting and record keeping required to establish compliance with the \$500 solicitation requirement.

It is the Board's opinion that while there is no statutory provision expressly requiring a corporation which has established a segregated fund to report or to keep records regarding expenditures for solicitation, such reporting and record keeping is necessary to effectuate the purpose of the campaign finance law. Therefore, the Board will adopt an administrative rule to this effect and provide an appropriate form.

Further, you submit that the \$500 limit should be applied only to "direct cash expenditures in connection with written or printed materials designed to influence contributions to and explain the purpose of the fund and the method of contributions."

It is the Board's opinion that such a restricted application would be too narrow, for as stated in El. Bd. Op. 75-3, "(s)olicitation of contributions would include those activities which have as their sole purpose and which by their nature or manner result solely in the raising of funds for the fund " Hence, the \$500 limit on solicitation of contributions cannot be restricted to the activities you suggest but must encompass any expenditure of money which has at its sole purpose the raising of funds for the segregated fund. Thus, it is the Board's opinion that in your example where an employee of the corporation spends part of his time making representations to fellow employees or other individuals with respect to participation in the fund, a portion of the employee's salary proportionate to the time spent by him in soliciting contributions must be included in the \$500 limitation on solicitation of contributions by the corporation. However, there would be no need to keep track of such employee's time if the amount of time spent is negligible.

As for your submission that all expenditures by a corporation in connection with such matters as printing cards for record-keeping, complying with state registration requirements, and handling the actual disbursement and collection of funds should be considered administration expenses, the Board agrees.

And regarding your submission that "general overhead expenses" in connection with the operation of the fund should be considered to be administration expenses, the Board also agrees.

Fifth, you ask a number of questions with respect to registration and reporting requirements of a nonresident segregated fund.

The Board has already addressed itself to these questions, and refers you to El. Bd. Ops. 74-7 and 75-3.

Sixth, you request the Board's opinion regarding so-called "trustee funds" and set forth the following facts regarding their operation:

Under such a plan, a corporation would establish a mechanism whereby its employees may engage in political giving without contributing to a separate segregated fund of the type described above. The typical contribution plan would permit employees to contribute directly to political candidates, committees and parties of their choice. As its involvement in the plan, the corporation would establish a payroll deduction program (or other mechanics for voluntary contributions) whereby an employee may direct that a certain amount of his compensation be deducted (or paid by the employee) and sent to one bank chosen by the corporation where the funds would be maintained on deposit in a separate account for each employee. When and if such employee wishes to make a political contribution out of his account, he would notify the bank directly, stating the name and address of the recipient of such contribution, and direct the bank to draw a check to the designated payee. The bank would then draw a check to that named payee, deducting the amount from the employee's account. The bank would transmit the draft directly to the candidate, committee or political party designated by the employee. Participation in such a program would be entirely voluntary, and would not be encouraged or secured by job discrimination or financial reprisal, or as a condition of employment by the corporation or any of its subsidiaries. Further, the program would be entirely confidential. Except for the employee and the bank, no one would have any knowledge as to the recipients of contributions made by participants. However, the bank, on a regular (e.g., quarterly) basis, would inform the corporation of the total amounts of contributions under the plan for the quarter to specific candidates, committee or political parties receiving them, so this information may be published for those participating in the plan. However, there would be no report as to the individuals whose contributions are included in these totals. In establishing the trustee account, the corporation would assume the costs incident to implementing the payroll deduction plan or other methods of direct contributions, plus any charges by the bank. These charges, if any, would cover the costs incurred by the bank in establishing and administering the separate accounts for participants, and for postage costs and mailing checks to candidates, committees or political parties. In addition, the corporation would make this plan known to individuals who may participate and would encourage voluntary employee participation.

It is the Board's opinion that under such a plan the involvement of the corporation is not within the purview of §11.38 (1)(a)g., Stats., and that the plan does not come within the definition of a "committee" which is subject to registration and reporting requirements and than an "out-of-state trustee plan" would not be a "non-resident committee."

However, the Board wishes to point out that any information regarding the total amounts of contributions under the plan to specific candidates, committees or political parties may not be used to coerce or intimidate participants in the plan. Also, it should be mentioned that any expenditures by the corporation in making the plan known and encouraging participants must be counted against the \$500 limitation since such activities would constitute solicitation. Finally, it should also be noted that any transfer of funds from the bank under such a plan must be accompanied by information regarding the names and addresses of all contributors of said funds.

Lastly, you request the Board to rule "that any corporation which acts in good faith upon the published formal opinion requested by this letter to be issued by the Board...will be, if the material facts presented by the corporation are as stated in this opinion request, exempt from civil or criminal prosecution."

The Board refers you to § 5.05 (6), Stats.