

El.Bd. Op. 75-8 (Reaffirmed 10/6/08)

Summary:

Discussion of separate segregated funds established pursuant to §11.38 (1)(a) 2., Stats., and their incorporation for purposes of liability. (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.

Opinion:

You have requested the Board's opinion on several questions: First, you ask whether "a committee which operates in states other than Wisconsin or for both state and Federal purposes may report for Wisconsin reporting purposes only the contributions received for Wisconsin elections and expenditures made for Wisconsin elections, if such contributions and expenditures are maintained in a separate fund."

It is the Board's opinion that such a committee may report, if maintained in a separate account, only contributions received and disbursements made in connection with Wisconsin elections. If such contributions and disbursements are not maintained in a separate account, the Board's rule in El. Bd. Op. 74-7 would apply regarding reporting requirements.

Second, you request "that the Wisconsin Elections Board rule that a non-profit corporation of the type described in Advisory Opinion 1975-16 of the Federal Election Commission does not constitute the type of corporation which is described in §11.38 (1)(a) 1, Stats., and "that a separate segregated fund of a corporation may be organized in the form of a non-profit corporation under Chapter 181."

It is the Board's opinion that a non-profit corporation created expressly and exclusively to engage in political activities which has incorporated for liability purposes only is essentially a political committee and, therefore, does not come within the prohibition of §11.38 (1)(a) 1, Stats. Thus, a separate segregated fund may be organized in the form of a non-profit corporation solely for purposes of liability.

Third, you ask "(i)f a corporate segregated fund operates in support of candidates for national and Wisconsin office, should not the \$500 limit be applied exclusively to the Wisconsin activities" and, if so, "how must such expenses be allocated and what record-keeping is necessary?"

The Board's opinion is that the \$500 limit should be applied exclusively to the activities of the corporation in Wisconsin. That is, any expenditure of money for the purpose of or which results in soliciting contributions to the fund for use in connection with Wisconsin elections, whether or not the expenditure actually takes place in Wisconsin, must be counted in computing the \$500 limitation. The allocation of such expenditures and record-keeping involved therewith are left to the discretion of the corporation. However, such records must accurately reflect the activities of the corporation regarding its expenditures for the solicitation of contributions for use in connection with Wisconsin elections.

Finally, you submit that "if an out-of-state corporate committee's sponsoring corporation has spent \$1,000 in soliciting funds for contributions, and makes contributions to Wisconsin candidates as well as candidates for national office and for office in several other states ...it should not be precluded from contributing to Wisconsin candidates for either national or state office" and request guidance on the matter.

It is the Board's opinion that it is the responsibility of the "sponsoring corporation" to determine what portion, if any, of the \$1,000 already spent on soliciting contributions is attributable to soliciting contributions to the committee to be used in connection with Wisconsin elections. Such portion must then be counted against the corporation's \$500 limit on expenditures to solicit contributions to its segregated fund.