

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**Distribution of printed materials; "political purposes": Questions of whether officeholder's purchase and distribution of printed materials to constituents are subject to reporting and identification requirements and violative of election bribery statute depends on whether intentions of distributor as to political office, content of materials, time and manner of distribution, pattern and frequency of distribution, and value of materials indicate purchase and distribution are for "political purposes." §§11.01 (16), 11.06, 11.30 (2), 12.11, Stats. (Issued to Richard A. Soletski, August 25, 1976)**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on March 26, 2008.

### **Opinion:**

You have indicated that you wish to purchase and distribute Brown County Directories to constituents at a time "well before ...a possible campaign for re-election." Each directory to be distributed would cost you about \$ .30 and would be accompanied by the words "Paid for and distributed as a public service by Richard A. Soletski, Route 1, Green Bay, Wisconsin." You ask three questions about the proposed purchase and distribution:

- (1) Would the purchase and distribution of directories be subject to reporting requirements and would the cost of such purchase and distribution be counted against expenditure limits?
- (2) Would the distributed materials be required to carry identification as political communications under §11.30 (2), Stats.?
- (3) Would the distribution of such materials violate the election bribery statute, §12.11, Stats.?

With regard to expenditure limits in your first questions, pursuant to the case of *Buckley v. Valeo*, 96 S. Ct. 612, the Attorney General has indicated that such limits are unconstitutional and unenforceable.

The answers to the remaining questions depend on the purpose behind the purchase and distribution of the directories.

First, the purchase and distribution of directories is a "disbursement" and subject to reporting requirements only if done for "political purposes." §11.01 (6), Stats. "Disbursement" is defined, in part, in §11.01 (6)(a):

A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value ... made for political purposes.

Second, the question of whether the distributed directories must carry identification as political communications, §11.30 (2), Stats., depends on whether they are "intended for political purposes." Section 11.30 (2), Stats., reads in part:

The source of all printed advertisements, billboards, handbills, sample ballots, paid television and radio advertisements and other communications intended for political purposes shall clearly appear thereon....

Third, §12.11, Stats., prohibits distribution of "any object" over \$1.00 in value in order to "induce" an elector to:

1. Go to or refrain from going to the polls. 2. vote or refrain from voting. 3. Vote or refrain from voting for or against a particular person. 4. vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

Because §12.11 is more narrowly drawn than the definition of "political purposes" in §11.01 (16), Stats., and because §12.11 is a penal statute, the Board has determined that if an act is not for "political purposes" under §11.01 (16), it is not prohibited by §12.11.

Therefore, if the purchase and distribution of the directories is not for "political purposes," the answers to your questions are as follows: (1) the costs of purchase and distribution are not required to be reported under chapter 11, Stats.; (2) the directories need not carry identification as political communications, §11.30 (2), Stats.; and (3) the purchase and distribution would not violate the election bribery statute, §12.11, Stats.

Section 11.01 (16), sets out the definition of an act for "political purposes" in part as follows:

An act is for 'political purposes' when by its nature, intent or manner it directly or indirectly influences or tends to influence voting at any election....

Determinations as to whether acts are for "political purposes" must be made on a case-by-case basis. El. Bd. Op. 76-7. Among the factors involved in a determination of whether the purchase and distribution of printed materials are for "political purposes" are: (1) the distributor's intentions as to political office, (2) the content of the distributed material, (3) the time of distribution, (4) the manner of distribution, (5) the pattern and frequency of distribution, and (6) the value of the distributed materials.

#### The distributor's intentions as to political office

A critical factor in evaluating the purpose behind the purchase and distribution of printed materials is whether the distributor intends to seek election or re-election to an office. One who has no intention of participating in a future campaign is unlikely to be motivated by "political purposes," as defined in §11.01 (16), Stats., in purchasing and distributing printed materials or authorizing such purchase and distribution on his behalf.

#### Content of distributed materials

Content is an important factor in determining whether printed materials are distributed for political purposes. There are two questions which must be asked about the content of the printed material: First, does the content of the printed matter or any accompanying material, such as a cover letter or flyer, indicate an intent to influence electors? For example does the material solicit political

support, expressly advocate the distributor's election or discuss the individual qualifications for office of the distributor or a potential opponent?

Second, do the materials serve a legitimate purpose other than a political purpose? For example, do the materials provide recipients with information about government or pending legislation?

#### Time of distribution

Another important factor is the proximity of the distribution in time to an election in which the distributor is a candidate. If other factors are the same, distribution during a campaign is more likely to be for "political purposes" than a distribution before that time.

#### Manner of distribution

The manner in which the printed material is distributed is an important factor in determining the intent of the distributor. For example, distribution at a political fund-raising event, as part of a door-to-door campaign effort, or by personal campaign committee mail indicates a political purpose.

#### Pattern and frequency of distribution

The pattern and frequency of distribution, while not as significant as the preceding factors, are entitled to some weight in the assessment of a distributor's purpose. For example, a pattern of distribution only to registered voters is more likely to be for political purposes than a pattern of distribution which includes others. On the other hand, a very limited distribution, to only a small number of electors, is less likely to be for political purposes than distribution to a large number of electors.

Frequency of distribution is closely related to the pattern and time distribution. Frequent distributions to potential voters, especially where the frequency increases as the election approaches, would tend more to indicate a political purpose than a single distribution well before a campaign period.

#### Value of materials

A factor of less significance in determining intent is the monetary value of the distributed materials. That factor could become important only when the value of the materials distributed to each elector is high enough to indicate an intent to influence the elector.

As indicated above, the answers to your questions regarding the applicability of campaign finance and election bribery laws to the purchase and distribution of county directories depend on whether the purpose is political. The guidelines enunciated above should aid you in determining whether your purpose would be viewed as political.