

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Corporate conduits: A corporation which acts solely as a conduit in collecting and transferring predetermined contributions of its members to a state organization does not violate the prohibition on contributions by corporations. §11.38, Stats., Ops. El.Bd. 74-1, 75-6, 76-3, 76-6. (Issued to Robert H. Friebert, December 17, 1976)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on October 6, 2008.

Opinion:

Your first question concerns §11.38, Stats., which provides in pertinent part:

Corporate political contributions prohibited. (1)(a)l. No foreign or domestic corporation, or association organized under ch. 185, may make any contribution or disbursement, directly or indirectly, to any political party, committee, group, candidate or individual for any political purpose or to promote or defeat the candidacy of any person for nomination or election to any public office or any referendum to be submitted to the voters.

You state that the Wisconsin Education Association Council (WEAC) is an unincorporated state council composed of local teacher labor organizations. You have outlined a plan by which WEAC would assess the local affiliates money to be used for political purposes. The assessment would be calculated at \$3.00 per teacher-member of the local (where there is no "fair-share" agreement between the local and the government employer) or \$3.00 per teacher-member of the bargaining unit (where there is such an agreement). Each teacher-member would be allowed the opportunity to seek a rebate of \$3.00 from WEAC after the transfer takes place, within certain time limits.

Some of the local affiliates are incorporated. You ask whether the participation of incorporated locals in the WEAC assessment plan, as that plan is described above, would violate §11.38, Stats. In El. Bd. Op. 74-1, the Board dealt with an assessment plan very similar to that described above. Local AFL-CIO unions transferred pre-determined amounts of political money to the state AFL-CIO each month. The state group calculated the assessment against each local per member of the local. The Board noted that the locals were without discretion as to whether the transfer of money was made, to whom the transfer was made, and the amount of the transfer. Accordingly, the Board held that the local unions did not "make" the contributions. They acted merely as conduits - collecting and transferring the contributions of their members to the parent group.

Insofar as the local unions here only collect and transfer contributions of their members but do not transfer funds other than the contributions of members actually collected, El. Bd. Op. 74-1 is controlling as to the facts of the WEAC plan which are set out in this opinion. Like the AFL-CIO locals in that opinion, the locals here would apparently not be "making" contributions because they would exercise no discretion in the amount, manner, or fact of the transfer of funds to WEAC. According to the facts set out above, a participating corporate local would merely collect and transfer the contributions of its members to WEAC.

Other opinions, notably El. Bd. Ops. 75-6 and 76-3, indicate that a corporation may properly function as a conduit. Like the corporations in those opinions and like the local AFL-CIO unions in El. Bd. Op. 74-1, the corporate local unions here would not be "making" prohibited contributions, given the facts set out above.

Accordingly, the Board concludes that a corporate local may participate in the WEAC assessment plan, as described above, without violating §11.38. The Board notes that this opinion is applicable only to those facts set out above and the Board has not passed on all the particulars of the WEAC plan.