

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

A national political party committee's payment of compensation to another specifically in exchange for full-time political services performed on behalf of a Wisconsin committee is a contribution, which subjects the national committee to registration and applicable reporting requirements. Such committee's payment of compensation to an employee or employees performing occasional services for a Wisconsin committee, when such services are merely incidental to the work of the employee or employees on behalf of the national committee, is not a contribution. §11.01 (S), Stats. (Issued to George Innes, July 21, 1977)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on December 17, 2008.

Opinion:

You state that the Republican National Committee and the State Republican Party have expressed interest in a program by which the National Committee would provide "aid and assistance in a number of areas to Republican Parties at the state level." That assistance would come in several forms. The most significant would be a "field assistance program," under which the national committee would pay the salary of a full time "organizational person" who would be used by the state party of Wisconsin for its purposes, including state and local purposes.

You ask "to what extent can (the National Committee) provide such help to the state organization in Wisconsin without violating the state election law? Is this assistance a reportable contribution?" There are no restrictions on the type of assistance you have described other than applicable registration and reporting requirements. If the assistance provided by the National Committee constitutes a contribution or contributions in excess of \$25 in a calendar year, the National Committee becomes subject to state registration requirements. §11.05, Stats. If the National Committee's contributions exceed \$1000 in a calendar year, it is subject to reporting requirements. §§11.05 (2r), 11.06, Stats.

Does the payment of compensation to a person for services rendered to a political party committee constitute a "contribution" as defined in chapter 11?

The answer depends on whether it is a "gift of ...merchantable value." §11.01 (5) (a), Stats. That language is ambiguous and requires for its application that the Board look to the purposes for which the definition of contributions was drafted.

The significance of that definition for the campaign finance laws is illustrated by the potential consequences of the Board's decision here. If the payment of compensation specifically in exchange for the performance of political services for a registrant is not a contribution, it need not be reported and does not count against applicable contribution limits. In that case, one could avoid disclosure and contribution limits by directing support toward compensation of a registrant's campaign workers, rather than contributing directly to the registrant. And a corporation or cooperative could avoid the prohibitions in §11.38, Stats., by compensating a

registrant's political workers. Those results are clearly inconsistent with the purposes of the campaign finance laws.

Sections 11.01 (5)(g)(l) and 11.01 (5)(g)(5) (renumbered §11.01(6)(b)1. and 5., Wis. Stats.) also support a conclusion that the transaction in question here is within the statutory definition of contribution. Those subsections exempt from the definition of contribution:

1. Services for a political purpose by an individual on behalf of a registrant under s. 11.05 who is not compensated specifically for such services....

"5. Compensation or fringe benefits incidental to employment provided by an employer to regular employees or pensioners who are not compensated specifically for services performed for political purpose, and not in excess of that provided to other regular employees or pensioners of like status." [Emphasis added]

In exempting compensation which is not paid specifically for political services from the definition of contribution, the legislature indicated its intent to include in that definition compensation paid specifically for political purposes.

The board concludes that the proposed field staff assistance and any other form of staff assistance which results in the compensation of persons by the National Committee specifically for services performed on behalf of the State Committee would constitute a contribution. Of course, if the state party maintains a separate committee for federal campaigns, and the staff services are provided only to that committee, they would not be subject to state regulation. Contributions for federal political purposes are outside the scope of Chapter 11. §11.03, Stats.

In addition to the above-described field staff program, you have asked about other types of assistance which the National Committee could provide the State Party, specifically training programs and materials, and consultation in certain technical areas, such as "finance, research, communications, etc."

These services present less concern to the Board than the compensation of a full-time field person because they are apparently of an occasional rather than a full-time nature, and are apparently incidental to other duties of the national party employees. It is the Board's opinion that if the National Committee employees who provide these services are compensated primarily for their work toward the goals of the National Committee and their services to the state party are merely incidental to their duties on behalf of the national committee, the National Committee's payment of compensation to such employees would come within the exemption of §11.01 (5)(g)5, Stats. That section, quoted above, excludes the payment of compensation to one's regular employees from the definition of contribution, so long as the employees are not compensated specifically for services performed for a state or local political purpose. Training materials provided incidental to such services would also fall outside the area of a reportable contribution.

Also, as stated above, any assistance which is provided solely for the benefit of the federal campaign committee of the state party is outside the area of state regulation.