

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Establishment of separate segregated fund by affiliated corporations: Where two corporations are independently incorporated but affiliated for certain purposes, they may each establish a separate segregated fund if (1) neither corporation provides money or other assets for the operation of the other's fund, and (2) neither corporation exercises a significant degree of control over the management of the other's fund. §11.38 (1)(a)2., Stats. (Issued to W. Pharis Horton, July 20, 1978)

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 a formal opinion of the Elections Board on behalf of the Wisconsin Realtors Association (WRA), an incorporated statewide organization of real estate brokers and salesmen, most of whom are grouped in a number of incorporated local boards. The WRA currently maintains a separate segregated political fund, per §11.38 (1)(a)2., Stats. You ask whether it would be permissible for a local board to establish such a fund, registered and reporting separately from WRA's fund. Implicit in that, question is the question of whether contributions of the local board's fund would count against the contribution limits applicable to the WRA fund, and vice-versa.

The only potential obstacle to a local board's establishment of a political fund is the limitation of a corporation to a single such fund, implicit in §11.38, Stats. If the relationship of a local board to the WRA's political fund is such that the political fund of the WRA is also the political fund of the local board, the local board may not establish an additional political fund.

You indicate that WRA and the local boards are separately incorporated, but are affiliated for certain purposes. The corporations share membership and, if a local board establishes a separate segregated fund, it will probably show a similar pattern of contributions.

However, these factors will not prevent a local board from establishing a separate fund if the following conditions are both met: (1) no money or other assets of the local board are used for corporate administration of the political fund of another local board or of the WRA, or vice-versa; (2) the local board does not exercise a significant degree of control over the management of the WRA political fund or the political fund of another local board, or vice-versa.

It appears from your description of the pertinent facts that these conditions can be met here. First, the assets used to operate and solicit for the WRA political fund come from the WRA's individual members, or, in some cases, from realty firms. Local board monies do not enter any account from which the WRA political fund is administered or solicitations for the fund made. Assuming that assets of the WRA or of a local board operating its own political fund will not be used for any

corporate administrative expense connected with another local board's political fund, the necessary absence of cross-funding would exist here.

Furthermore, the management of each participating corporation's political fund could be insulated from the exercise of significant control by any other corporation, meeting the second element of the test for establishment of separate funds:

The WRA fund is managed by a committee composed of 9 members selected by the president from the membership of the WRA. The president is selected by the 175 members of the Board of Directors, who are in turn chosen by the WRA membership, composed of the individual members of the 39 local boards, plus realtors residing in areas not served by local boards. The 9-member committee managing the WRA fund would not include more than 2 members of a single local board at any time.

Likewise, you indicate that the political fund of a local board would be independently managed and free from the control -to any significant degree -of the WRA or any other local board which has its own fund.

The Elections Board concludes that, under the conditions described above, the incorporated local realtor boards may establish and operate separate segregated funds. However, the Board notes that this opinion must be qualified in two particulars:

First, if any of these corporations (including the WRA) conduct joint fund raising efforts for their political funds, the expenses and monies raised must be allocated so that one corporation does not contribute to the maintenance of another's fund. For example, the costs of a brochure used for joint solicitation should be allocated among the participating corporations in proportion to each corporation's share of the funds raised.

Second, if a private incorporated realty firm contributes from corporate assets to the maintenance of one of the corporation's political funds, it may not do so for any other corporation's fund.