

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Prohibition on mass mailings after filing of nomination papers: Secretary of State's office may use state funds for regular mass mailings necessary to carry out duties of office after filing nomination papers and before election, provided that mailings are not directed toward political purposes. §11.33, Stats. (Issued to Terrence S. Waitrovich, July 20, 1978)

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 requested a formal opinion on the application of §11.33, Stats., which provides in pertinent part:

No person elected to state office may use public funds for mailings of 100 (now 50) or more pieces of substantially identical material after filing nomination papers as a candidate for national, state or local office, until after the date of the election or after the date of the primary election if such person is not nominated and does not file nomination papers as an independent candidate....

You describe the planned mailings and times of mailing as follows:

"First of all, the Wisconsin Statutes in §§180.841 and 180.142 require the Secretary of State to mail intents to revoke and certificates of revocation of the certificates of authority to do business in Wisconsin by foreign corporations. One of the conditions for the revocation is the failure to file an annual report by June 1. In general, this office has discovered it best to wait until August to determine whether all foreign corporations which intended to file an annual report for the year will indeed do so. In August, we typically mail approximately 800 notices of an intent to revoke the certificates, and later in October we typically mail approximately 300 notices of revocation of the certificate of authority to do business in Wisconsin.

Similarly, §137.01 (1)(g) of the Statutes requires that the Secretary of State mail a notice of expiration of commission to notaries thirty days before the commission expires. Typically 200 such notices are mailed each week.

(Further) ..., Chapter 418, Laws of 1977, mandates that the Secretary of State involuntarily dissolve domestic business corporations which have not filed an annual report for three years in order to clear names for new incorporators. The first year of this project (fiscal 1979) will be a clean-up year. Thousands of intents to involuntarily dissolve and certificates of involuntary dissolution will be issued to a large number of defunct corporations since a project such as this one has not been undertaken in decades. The Legislature has appropriated the necessary funds on an annual basis to proceed with the main thrust of the project during fiscal 1979. Consequently,

budget restraints require that several thousand mailings relating to the involuntary dissolution of corporations occur in July, August, September and October.

(Finally) ..., the lobby reform act of 1978 will be the main impetus behind various mailings of over 100 similar articles. The act has an effective date of January 1, 1979. By that date, the office of the Secretary of State must adopt forms and administrative rules to enforce the provisions of the new law. One set of forms and rules will concern the program responsibility of the Secretary of State to mandate the manner in which lobbyists and principals account for their expenses.

The office of the Secretary of State had planned to draft preliminary forms regarding this program responsibility and then hold a series of informal meetings with lobbyists and principals during the summer in order to receive feedback on the forms before they became law. As you know, the rule-making procedure for a January effective rule will require promulgation procedures beginning in October. Consequently, it is hard to conceive of holding the informal meetings at any other time than during the late summer, and I feel that the holding of such meetings is definitely good public policy to follow in adopting a system of accounts."

A literal application of §11.33, Stats., could prevent the secretary from making the mailings described above. However, the controlling rule in statutory construction is to give effect to the intent of the legislature. As you have described them above, these mailings, at the times proposed, are consistent with duties expressly or impliedly imposed on the secretary's office by the legislature. Further, as described above, the mailings would not fall within the area of evil at which §11.33, Stats., is apparently aimed --prevention of the use of state mailing resources for political purposes during campaigns. (The Board assumes that the mailings will not include any material other than that necessary to carry out the duties described above; specifically, the mailings may not contain any campaign-related material.)

Accordingly, the Board concludes that the mailings described above may take place during the subject period of §11.33, Stats., without violating that statute. The Board notes that this opinion should not be read to authorize mass mailings during the subject period of §11.33, Stats., which are not expressly or impliedly required by the legislature to be made at such time. Further, the Board notes that use of state resources for mailings aimed primarily at political purposes is forbidden at any time. See El. Bd. Op. 76-16.