

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**Application of contribution limits to affiliated committees: Where affiliated committees are prohibited by the terms of their affiliation with a parent organization from supporting statewide or state legislative office candidates other than those chosen through an endorsement procedure controlled by the parent, the contributions of the affiliated organizations to statewide or state legislative candidates must be charged to the contribution limits of the parent. §11.26, Stats. (Issued to Robert Frieber, August 17, 1978)**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on June 9, 2008. (Note that the legislature modified §11.26, Wis. Stats., following issuance of this opinion.)

### **Opinion:**

On behalf of the Wisconsin Education Association Council (WEAC), you seek a formal Elections Board opinion on the application of contribution limits. You describe the fact situation as follows:

WEAC is organized into three levels: (1) local units affiliated with WEAC; (2) intermediate regional units (UniServ); and (3) WEAC, the statewide association. WEAC maintains a political action committee (WEAC-PAC) and many of the UniServ and local units also maintain political action committees (PACS). The sources of funds for the various PACS are contributions of individual union members. None of the PACS contribute to another PAC.

A candidate for statewide or legislative office may not receive support from a UniServ or local unit PAC unless the candidate is endorsed, pursuant to the following procedure:

Candidates running for state office, i.e., statewide candidates and legislative candidates, are endorsed in the following manner. The WEAC-PAC, after appropriate investigation, recommends endorsement of particular candidates for state office. The PAC cannot make a recommendation for endorsement unless the candidate obtains a two-thirds vote of the committee. The endorsement procedure then continues with approval by the WEAC Board of Directors. After Board approval, a referendum is submitted to those teachers of WEAC affiliates who are qualified to vote because they have contributed to the PAC. In the case of statewide candidates, the vote is taken of all eligible persons. With respect to legislative races, the vote is restricted to members of the WEAC affiliates who reside in the general geographical area the candidate would represent if elected.

Any candidate who receives a majority of the votes is then declared to be endorsed and is then eligible for both WEAC-PAC transfers and UniServ-PAC transfers should either organization separately decide to contribute to that candidate."

You ask whether the contribution of a local unit PAC or UniServ PAC to a state legislative or statewide candidate would be charged against the contribution limits applicable to WEAC.

The pertinent statutes are §§11.26 (2), (5) and (6), Stats. Section 11.26 (2), Stats., imposes limits on "any contribution, directly or indirectly" by a special interest committee to a single candidate; §11.26 (5), Stats., limits contributions "directly or indirectly" by a special interest committee to constitutional office candidates; §11.26 (6), Stats., limits contributions "directly or indirectly" to all legislative or local candidates.

The answer to your question depends on whether the contributions of local unit PACS and regional PACS to candidates endorsed through the process described above would be "indirect" contributions of WEAC, and therefore chargeable against the limits applicable to WEAC-PAC. In the opinion of the Board, the answer is "yes."

The contribution limits are intended to prevent the reality or appearance of the exchange of political contributions for undue influence. §§11.001, Stats.; Buckley v. Valeo, 96 S. Ct. 612; 65 Op. Atty. Gen. 145. If several separate committees are prohibited by the terms of their affiliation with a parent organization from supporting any state candidate other than one chosen by the parent, the potential influence of the parent over those candidates is extended far beyond the limits contemplated by the legislature. That the limits are written to apply to "any contributions, directly or indirectly" demonstrates the legislature's concern with their potential circumvention in ways such as this.

The endorsement process you have described produces candidates chosen by WEAC, rather than by the local or regional PACS. The prospective nominees for endorsement are dictated by the WEAC-PAC and the WEAC Board of Directors. Ultimately, approval of those nominees for endorsement must come from teachers who are jointly members of WEAC, a regional UniServ, and a local union. However, if a candidate is not nominated by the WEAC-PAC and approved by the WEAC Board of Directors, the candidate's name will never go before the teachers for approval, regardless of how much support he or she may have in a local PAC or UniServe PAC.

Therefore, under the circumstances you have described, the Board concludes that, for contributions to candidates for statewide office or state legislative office, the various PACS here must be treated as a single committee subject to a single limit. Because the regional and local units PACS are free to make their own choices among local candidates, the PACS will not be treated as a single committee for purposes of applying the contribution limits in local races; each PAC may contribute up to the applicable per-candidate limit to a candidate for local office.