

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Limits on Contributions to political Party Committees and Retirement of Debts: El.Bd. 1.04, Wis. Adm. Code, does not apply to political party committees; a political party committee may not accept a contribution in excess of the limits in §11.26 (8), Stats., in any calendar year, even if part of such contribution is used for retirement of debts outstanding from a previous calendar year. §11.26 (8), Stats. (Issued to David M. Travis, May 18, 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 the requirements of §11.26(8), Wis. Stats., following issuance of this opinion.)

Opinion:

You have requested a formal opinion of the Elections Board on the applicability of the administrative rule on debt-retirement, GAB 1.04, Wis. Adm. Code, to political party committees.

That rule provides:

Debt retirement; treatment of contributions received and accepted after election. (1) Contributions received and accepted for the purpose of retiring debts incurred in a prior campaign should be counted against the contributor's contribution limit for said campaign. Contributions received and accepted in excess of the amount needed to retire such debt shall be counted against the contributor's contribution limits applicable to the next campaign on a first-in first-out basis with the contributions received and accepted first applied to debt retirement.

(2) Notwithstanding the above, a contribution received and accepted before the end of the post-election reporting period should be counted against the limits for the campaign in which the election took place, regardless of whether all campaign debts have been retired at the time the contribution is received."

The rule clearly applies to personal campaign committees with outstanding debts from a previous campaign. Such a committee may accept a contribution in excess of the contributor's per-campaign limit by applying a portion of the contribution -up to the amount needed to retire past campaign debts -to the contributor's limit of contributions to the past campaign. The remainder is applied toward the contributor's limit for the future campaign.

You have asked whether a political party committee can similarly accept a contribution in excess of the contributor's limit for the current calendar year by applying part of the contribution to debt retirement for a previous year, using the procedure outlined in GAB 1. 04.

In the opinion of the Board, the statutes prohibit that result.

The limits on contributions to a candidate apply per "campaign," El. Bd. Op. 75-7, and there is no statutory definition of that term for use in applying the contribution limits. This led to the promulgation of GAB 1.04 to provide guidance for candidates as to the point at which the past campaign ended and the next campaign began in allocating contributions between debts from a prior campaign and surplus for the next campaign.

On the other hand, the limits on contributions to political party committees apply per "calendar year" rather than per "campaign." §11.26 (8), Stats., provides:

"No political party under s. 5.02 (12) may receive more than a total of \$25,000 in value of its contributions in any calendar year from all other committees, excluding transfers between party committees of such party. No such political party may receive more than a total of \$3,000 in value of its contributions in any calendar year from any specific committee or its subunits or affiliates, excluding political party committees. No committee, other than a political party committee, may make any contribution or contributions, directly or indirectly, to a political party under s. 5.02 (12) in a calendar year exceeding a total value of \$3,000." [Emphasis added]

Unlike the term "campaign," the phrase "calendar year" is unambiguous and does not require interpretation through administrative rule. The plain language of §11.26 (8), Stats., prohibits a political party committee from accepting contributions in excess of the applicable limit in any calendar year, regardless of whether part of that contribution is intended to be used for retirement of campaign debts incurred in a previous calendar year.

Further, the Board notes that contributions to any committee other than a personal campaign committee cannot be earmarked for a specific purpose, such as debt retirement. §11.16 (4), Stats.

In conclusion, the Board is of the opinion that GAB 1.04 does not apply to contributions to a political party committee; such a committee's acceptance of a contribution or contributions in excess of the limits in §11.26 (8), Stats., during a single calendar year would violate that section, regardless of whether part of such contribution or contributions is intended or used for retirement of debts incurred in a previous calendar year.