

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**Applicability of ch. 11, Stats., to Lawyers' Judicial Endorsement Poll: A poll conducted for the purpose of endorsing candidates in which the only information disseminated to those polled is biographical information on the candidates is not political activity and, therefore, not subject to regulation under ch. 11, Stats. The same is true of a press release indicating the results of the poll. (Issued to Richard S. Gallagher, April 19, 1979)**

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 the opinion of the Elections Board based on the following facts:

The Milwaukee Bar Association is in the process of incorporating under the name of the Milwaukee Bar Association, Inc. (hereinafter "MBA"), as a nonstock, nonprofit corporation organized under ch. 181, Stats.

The Judicial Endorsement System Committee (hereinafter "Committee"), a joint committee of the MBA and the Milwaukee Junior Bar Association (hereinafter "MJBA"), a separate organization of certain Milwaukee attorneys, administers the judicial endorsement system whereby the members of the MBA and MJBA endorse candidates for judicial offices. Such endorsement is determined by a poll financed by the MBA. The Committee disseminates the ballots and biographical information on the candidates for judicial office to all attorneys licensed in the State of Wisconsin having offices in or living in Milwaukee County whether or not they are members of the MBA. Communication regarding the results of the poll is made in publications mailed exclusively to members of the MBA and by a press release by the MBA and MJBA.

You ask the Board to opine as follows:

First, that the MBA's disbursement of corporate treasury funds for the purpose of financing the poll is exempt under §11.29, Stats., as a disbursement for the purpose of the MBA communicating with its members with respect to candidates for elected office.

Second, that the dissemination of information by the MBA to its members identifying candidates who have been endorsed by the poll is exempt under §11.29, Stats., as a communication by a corporation to its members with respect to candidates for elected office.

Third, that the dissemination of information with respect to endorsed candidates to the news media by means of the press release is not a publication as defined in §11.01 (5), Stats.

The MBA's disbursement of corporate treasury funds for the purpose of financing the poll cannot be exempt under §11.29, Stats., since that section applies only when the disbursement is for the purpose of communicating only with the corporation's members to the exclusion of all other persons. Under the facts upon which the Board is to base its opinion, it is clear that the poll is conducted not just among members of the MBA but among all attorneys licensed in the state of Wisconsin who have offices in or live in Milwaukee County whether or not they are members of the MBA.

However, §11.29, Stats., applies only when the communication exclusively with members of the corporation is for political purposes. Based on the facts set forth above, the only information communicated to those being polled is the ballot and biographical information on the candidates. Such a communication is not for political purposes within the narrow definition which has not been placed on the term "political activity" limiting it to acts which are undertaken with the purpose of expressly advocating the election or defeat of an identified candidate. See 65 Op. Atty Gen. 145, 150-152 (1976). Therefore, not only is §11.29, Stats., inapplicable to the communications made in conducting the poll but such activity is not subject to regulation under any provision of ch. 11, Stats.

Similarly, the mere issuance of a press release does not fall within this narrow definition of "political activity" and, therefore, is not a contribution under §11.01 (5), Stats., is not a publication as defined in §11.01 (5)(f), Stats., and is not subject to regulation under ch. 11, Stats.

The communication of the results of the poll in publications mailed exclusively to members of the MBA, being so restricted, would, of course, be exempt under §11.29 (1), Stats., from the reporting requirements of ch. 11, Stats.