

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Effect of Exceeding Contribution and Spending Limits on Eligibility for Public Financing: a candidate who accepts contributions that exceed the applicable limits is ineligible to receive a public financing grant, even if the candidate's committee reimburses the excess contributions; a candidate who exceeds the applicable spending limits also is ineligible to receive such a grant; in-kind contributions are limited to things of value; loans if timely forgiven may be used as qualifying contributions. §§11.50(2)(b), 11.26(1), 11.31 (1), (2), (9), and 11.01(6) (a)1., Stats. (Issued to David M. Travis, November 29, 1984)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed August 27, 2008.

Opinion:

You have requested a formal opinion of the Elections Board on questions relating to the requirements of an eligible candidate to receive a grant from the Wisconsin Election Campaign Fund under §11.50, Stats.

The Board reaffirms its opinion expressed in El. Bd. Op. 78-5 that holds a candidate who has exceeded the limit on contributions to his or her own campaign after October 21, 1978 is ineligible to receive a public finance grant even if the candidate's committee reimburses him or her for the excess amount. §§11.50(2)(b), 11.26(10), Stats.

Section 11.50(2)(a), Stats., sets out a number of conditions that must be met before the Elections Board can certify a candidate as eligible for a grant. These include, among others, a requirement that the candidate make timely application and the candidate's financial reports filed as of the primary "indicate that his or her statement filed with the application is true."

This language refers to the candidate's sworn statement, filed in applying for a grant, that the contribution limits in §11.26, Stats., and the disbursement limits in §11.31, Stats., have been met and will continue to be met at all times they have applied or will apply. The limits in §11.26(1) and (2), Stats., prohibit contributions to a candidate for election or nomination to the appropriate office that exceed the limits specified.

If the limits on §11.26, Stats., are exceeded, the candidate cannot salvage eligibility for a grant by securing reimbursement for the excess contribution. Unless a contribution is returned within 10 days of its receipt, it is "received and accepted" as of the day of its receipt. §11.06(2)(b), Stats. Receipt and acceptance of a contribution which exceeds the applicable limits constitutes noncompliance with that limit, even if reimbursement is subsequently made. (See GAB 1.25, Wis. Adm. Code.) And, as indicated above, noncompliance with the limit on all contributions in §11.26, Stats., is fatal to a candidate's attempt to obtain a public financing grant.

In addition, if the limits on spending in §11.31, Stats., are exceeded, the candidate cannot salvage eligibility for a grant. Disbursement of funds that exceed the applicable limits constitutes noncompliance with that limit. §11.50(2)(a), Stats. such noncompliance with the limit on spending in §11.31, Stats., is fatal to a candidate's attempt to obtain a grant.

The Board points out that a public financing applicant who files a statement that he or she has not exceeded the limits in §11.26(10), Stats., or §11.31, Stats., may be guilty of violating prohibitions against the filing of false statements if that statement is not true. §§11.27(1), 946.32, Stats.

In addition, a candidate must meet other conditions before the Elections Board can certify a candidate as eligible for a grant. These also include raising a minimum amount of contributions, other than loans, of \$100 or less during an appropriate period of time. §11.50(2)(b)5., Stats. The contributions may include in-kind contributions that are any thing of value except personal services. §§11.50(2)(b)5., 11.01(6)(a)l., Stats. The contributions may not include loans. §11.50(2)(b)5., Stats. But if a candidate or other person makes a personal loan to the candidate's committee that such person forgives in writing to the committee no later than the date of the primary, the loan will be treated as a contribution for this purpose. §§11.50(2)(b)5., 11.01(6)(a)l., Stats. To do so the candidate must file an amended campaign finance report no later than the filing deadline under §11.50(2)(c), Stats., to qualify for a grant showing that the loan is forgiven and it is a contribution.