

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Independent insurance agents can establish a commission withholding system that will enable participating insurance companies to forward agents' contributions to an agents' PAC, without attributing any of those contributions, or the expenses of maintaining the system to the participating insurance companies. Separate bookkeeping of each individual agent's contributions and pro-rata expenses must be maintained and reported. (Issued to Mr. Steven A. Reidich, October 5, 1988)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on May 5, 2008.

Opinion:

You have asked whether certain independent insurance agents may have a portion of their commissions withheld by various contracting insurance companies for purposes of transferring those commissions to a political action committee formed and sponsored by the agents.

Because the insurance companies will not be making a disbursement of their own money, but rather a disbursement of money belonging to their obligee agents, the money transferred to the PAC would not appear to be a prohibited corporate disbursement for "political purposes." The expenses incurred by the insurance companies in accounting, record-keeping, handling and transmittal of these commissions, however, would be disbursements made on behalf of a political action committee. Because a political action committee, by statutory definition, has no other purposes than those which are political, these withholding expenses would be prohibited corporate disbursements, unless they met the administrative expense exception of §11.38(2), Stats., or unless those expenses were not deemed expenses of the corporation. The administrative expense exception of §11.38(2), Stats., could not apply herein because the various participating insurance companies will not be (and cannot be) corporate sponsors of the same PAC. These withholding expenses may be deemed to be non-corporate, however, if the agents and the insurance companies have a pre-existing agreement, that these expenses will be borne by, and deducted from, the commissions of the agents. In that circumstance the disbursement, arguably, is being made by the agents and not by the insurance companies. A contra-argument does exist that the deduction from the commissions constitutes a reimbursement of a previously occurring disbursement and that the statutory prohibition of corporate disbursements (for political purposes §11.38) does not make an exception for reimbursed corporate disbursements. We do not believe that §11.38 was intended to have that strained an application.

For the same reasons described in the preceding paragraphs with respect too the term "disbursements," the money transferred to the PAC and the expenses chargeable to the agents would not be attributable to the insurance companies for the purposes of constituting a "contribution" by the companies. Rather, the money and expenses would both be attributable to the agents and would constitute "contributions" of the agents.

The Board is concerned, however, about preserving a clear record of each agent's contribution to this PAC. Although the insurance companies will write only one check to the PAC, they should

maintain and provide a clear record of the contributions of each participating agent. [Also, the reports of the political action committee should show the exact contributions of each and every contributing independent insurance agent, and not just the amount of the check from the collecting insurance companies. If the participating insurance companies did not provide this clear "paper trail" to the PAC and to the Board, the Board would want to reconsider whether the policy of §11.38, and the remainder of Ch. 11, would be sufficiently compromised as to require a more narrow construction of the terms "corporate disbursements and contributions."