

Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016

Summary:

Interest income from conduit and PAC depository accounts, properly invested under §11.25(3) Stats., may be used in the same manner as other funds in the account, including payment of administration and solicitation expenses of a conduit if the conduit agreement so provides.

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on October 6, 2008.

Opinion:

You have requested the State Elections Board to issue a formal opinion under the provisions of §5.05(6), Stats., regarding the investment of conduit and political action committee funds in interest bearing accounts, to wit:

1. Must interest income be distributed to the individual committee or group designated by the contributors to the WBI/GIVE conduit? If so, how is the interest income to be allocated between the contributions of the individual contributors in the commingled conduit account? What specific representations with regard to the interest income portion of the transferred amounts must be given to a transferee as part of the conduit reporting requirement under §11.06 (11), Wis. Stats.?

Because the conduit account belongs, in a pro rata share, to each of the contributors, the interest income earned by the conduit account belongs to each of the contributors in the same share. That income, therefore, is either allocated, pro rata, to each of the contributors and added to each's account balance or is distributed according to the specific directions of each of the contributors. Unless the conduit agreement contains a blanket distribution provision for all future interest income, a specific direction for each payment of interest would have to be received from the contributors or the interest must be allocated to the contributors' balances. Because the interest income is taxable income to each of the contributors, it is not income to the transferee and no specific representations, (apart from those of any transfer), with regard to it are required.

2. Must interest earned on the WISBELL-PAC be distributed to committees or individuals?

If the WISBELL-PAC funds are properly invested under §11.25(3), Stats., the interest generated by that investment is added to the balance in that account and may be distributed in the same manner as the balance of the account, whether to committees or to individuals.

3. May the interest earned on the conduit depository account be used for payment of the expenses of administration of the conduit?

The interest income earned by the conduit depository account is added to the balance of that account and may be used for any of the purposes for which that balance may be used. The balance of the conduit account may be used for administrative expenses of the account only if the conduit agreement so provides. If the conduit agreement is silent as to payment of administrative

expenses, those expenses are paid by the administrator of the fund out of its own assets until the conduit agreement is amended to provide otherwise. Conduit expenses which are not administrative expenses but are, rather, solicitation expenses are also paid by the administrator of the fund out of its own assets until the conduit agreement is amended to provide otherwise. Section 11.38(1)(a)3, Stats., prohibits a corporate or association administrator of a conduit from spending more than \$500 annually for solicitation of contributions to a conduit.

4. May interest earned on the depository account for WISBELL-PAC be used for payment of the administrative expenses of WISBELL-PAC?

The interest earned by a PAC account will be treated the same as the contributed funds in the PAC account. PAC funds may be used for any legitimate political purposes, as extensively defined in § 11.01 (16), Stats. Administrative expenses of the PAC are clearly expenses for a political purpose because they are essential to enabling a PAC to support or oppose candidates or referenda. Therefore, the interest earned by the PAC depository account may be used to pay administrative expenses of the PAC.

5. If interest income can be expended on expenses of administration of either or both WBI/GIVE or WISBELL-PAC, would the provision of tokens of nominal value, such as lapel pins purchased with the interest income, to WBI/GIVE or WISBELL-PAC contributors be considered a proper administrative expense? (.... Instead the tokens would be awarded as part of a solicitation program aimed at increasing the political awareness and activity of employees.)

The parenthetical statement that follows your question supplies the answer to your question. Tokens that are awarded as part of a solicitation program are solicitation expenses, not administrative expenses. These expenses are not requisite to the support or opposition of candidates or referenda nor to the conduit of the PAC fund. The PAC fund is able to perform all its functions without incurring such expenses. Rather, such expenses are incurred to increase participation in the PAC fund. That type of expense is a solicitation expense. Solicitation expenses may be paid out of PAC funds, including interest income, but if paid out of corporate sponsor funds they are subject to a \$500 annual limitation.