

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**A corporation which acts solely in the nature of a conduit in collecting and transferring the contributions of its employee-agents to the political action committee of the employee-agents' statewide trade association does not make a contribution to that trade association PAC, if none of the expenses of administration or solicitation of those contributions are borne by the corporation and if a list of the contributors and the amounts of their contributions is maintained at each stage of the transfer. (Issued to Brady Williamson, August 12, 1991)**

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 that the State Elections Board issue an opinion pursuant to §5.05(6), Stats., regarding a proposed combined dues/contribution billing plan for members of the Wisconsin Realtors Association (WRA) and its separate segregated fund, Realtors Political Action Committee (RPAC).

The facts regarding which you have requested our opinion and upon which this opinion is based are as follows. The WRA is an incorporated statewide organization of individual real estate brokers and salespersons. Membership in the WRA is voluntary on the part of each individual broker or salesperson. Most of the members of the WRA also are members of an incorporated local board of realtors.

Although membership in a local board is voluntary, the local boards of realtors are sustained by dues assessed to, and paid by, their members. In many cases the individual realtor-members pay their dues directly to the local board. In some cases, however, real estate brokers or agencies pay, through a single brokerage check, the dues of all of the real estate salespersons associated with that brokerage. The salespersons then repay the dues through deductions from future commission checks. If the brokerage is incorporated, its employees' dues payments are paid by corporate check.

RPAC would like to solicit contributions from individual members of those local boards, as part of the local board's regular dues-billing process, by requesting that the individual members add a voluntary contribution of \$10.00 to their regular dues payment. Upon receipt of a combined dues-contribution check, the local board would deposit the check in a separate escrow account. The board would then forward to RPAC, by corporate check drawn against the escrow account, the contribution portion of the deposits together with the names of the individual contributors and the amount of their contributions. The dues portion of the deposits would be transferred from the escrow account to the local board's regular account.

If a brokerage pays its employees/associates' dues with a corporate check and includes RPAC contributions from some of its members, the brokerage would identify the individual contributors and the amounts of their contributions. Based on the information provided by the brokerage, the local board would then allocate and forward the appropriate contribution portion of that check to RPAC and transfer the balance, as dues, to its regular account.

As a precaution against some of the concerns that this type of arrangement could engender, the WRA has indicated that the solicitation that accompanies the dues statement would state that the RPAC contribution is voluntary; that the recommended amount is only suggested; that the member may give more or less than the suggested amount; and that if the member does not wish to make any contribution, he or she should deduct the suggested amount from the total shown on the billing statement. As a further precaution to avoid any implication of coercion, the dues statement would state that the local board will not favor or disadvantage any member because of the amount of their contribution or because of their decision not to contribute. And as a final safeguard against the misapplication of the tax deduction for dues paid to professional associations, the dues statement would state that contributions to RPAC are not tax deductible.

#### Discussion:

Sub.11.38(1)(a)(1), Stats., prohibits, in Wisconsin, any corporation from making any contribution to any "political committee".

11.38 CONTRIBUTIONS AND DISBURSEMENTS BY CORPORATIONS AND COOPERATIVES. (1)(a)(1). No foreign or domestic corporation, or association organized under ch.185, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate, or individual for any purpose other than to promote or defeat a referendum. (emphasis supplied)

"Political committee" is a term defined by §11.01(4), Stats., to include any combination of 2 or more persons that makes or accepts contributions for the purpose of advocating the election or defeat of clearly identified candidates and, thus, clearly includes RPAC. Consequently, because they are corporations, neither WRA, nor any incorporated local board of realtors nor any incorporated realty brokerage, can make any contribution to RPAC - subject to exceptions specifically provided by §11.38, Stats. The only exception in the statute, germane to the circumstances herein, is that a corporate sponsor - such as WRA - may pay all the administration expenses and up to \$500 of the solicitation expenses of its separate segregated fund - in this case, RPAC.

Previous opinions of the Elections Board have recognized that use of corporate checks to transfer the contributions of individual members of the corporation will not be treated as a transfer of funds of the corporation if:

- 1) the contributions of the individual members are deposited into a separate account used only to process the contributions/dues of the individual members.

2) the money in the account against which the check is drawn belongs to the individual members; and the corporation is solely acting to facilitate the transfer of the individuals' contributions.

3) a clear record of the identity of each contributor and the amount of his or her contribution is maintained by the corporation; and a copy of that record is furnished to the transferee committee, with each transfer, for purposes of reporting the contributions to the appropriate filing officer.

Similarly, the Board has opined that the expenses of withholding individual members' contributions to a political committee (and otherwise administering deposits into and withdrawals from a depository account), are administrative expenses that, pursuant to §11.38, Stats., may be borne by the corporate sponsor of the political committee. If the corporation administering the depository account is not the corporate sponsor of the recipient political committee, however, those expenses are a prohibited contribution unless the facilitating corporation (a local board in this case) has a pre-existing agreement with the individual members, or with the recipient political committee (RPAC herein), or with its corporate sponsor (WRA), that these expenses will be paid by the members, the committee or the sponsor.

The expenses of solicitation of contributions to a political committee, if incurred by someone other than the committee, are also a contribution to the committee unless (and until) the committee reimburses the person or committee incurring those expenses. Consequently, the statutory prohibition on corporate contributions to political committees precludes a corporation from paying the solicitation expenses of a political committee, subject, as always, to statutory exception. A specific exception to this rule is provided in §11.38(1)(a)(3), Stats., for up to \$500 of solicitation expenses incurred by the corporate sponsor of a political committee (the sponsored committee being referred to as a separate segregated fund in the statute).

The statutory exception means that a corporate sponsor, such as WRA, could pay up to \$500 of a committee's (RPAC's) solicitation expenses; but a corporate nonsponsor, such as an incorporated local board of realtors, could not pay any of the solicitation expenses of a committee (RPAC) that the local board did not sponsor. Consistent with the above opinion regarding administrative expenses, however, the incurring of solicitation expenses by a corporate nonsponsor will not be regarded as a contribution if they are paid pursuant to a pre-existing agreement with the committee (RPAC), or with its sponsor (WRA) that the committee or the sponsor will prepay or repay these expenses. Under the circumstances described herein, the solicitation is clearly that of WRA and RPAC and not that of the local board (who is acting solely as an intermediary because of its dues collection relationship with RPAC members). As long as the expenses of solicitation are paid by WRA or RPAC, or both of them; do not exceed \$500 annually, (if paid by WRA); and are paid pursuant to a pre-existing agreement making those expenses the obligation of WRA and/or RPAC, they would not be considered a contribution of the local board if it did initially incur them.

With respect to collection and aggregation of political contributions of employee/associates by realtor brokerages, for purposes of delivering the contributions to RPAC, the same policy - that

individual members' political contributions to a PAC may be collected by a corporate entity and forwarded with one corporate check to the PAC - could be applied to employer brokerages or agencies. But a clear record or "paper trail" of the transaction must be maintained at each step of the transaction. The employer agency or brokerage must make a list of each of the contributors to RPAC and the amount of each contributor's contribution. A copy of that list must be provided to the local board of realtors when the agency or brokerage sends its check to that board. After the local board has allocated a portion of the brokerage check to members' dues, it will forward to RPAC a check for the amount of the brokerage's member-contributions, together with a copy of the list of the brokerage's contributors and the amounts of each member's contribution, retaining a further copy of that list for the brokerage's file. Thus, at each stage of the transfer, a check issued by the transferor will represent the aggregation of contributions of identified persons in identified amounts.