
1996 Wis Eth Bd 5
LOBBYING

1. A lobbyist may, without restriction from the lobbying law, advise a lobbying organization's members, or their employees, about making campaign contributions as long as the lobbyist is acting independent of any candidate or candidate's campaign committee.
2. Campaign contributions collected from members of a lobbying organization, a circumstance popularly known as "bundling", are best delivered by one of the contributors on behalf of the contributors without reference to the organization. Neither a lobbyist (nor anyone acting at a lobbyist's behest) nor anyone representing himself or herself as acting on behalf of the lobbying organization should physically convey campaign contributions to partisan elected state officials, or candidates for partisan state elective office, except during the statutorily authorized period.

OEB 96-5 (April 12, 1996)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a licensed lobbyist authorized to lobby on behalf of a lobbying principal that is a membership organization.
 - b. From time to time, members of your organization, and members' employees, make campaign contributions.

Questions

- [2] The Ethics Board understands your questions to be:
1. Does the lobbying law restrict your advising your organization's members, or their employees, about making campaign contributions?
 2. Does the lobbying law restrict your *delivery* of a campaign contribution made by one of your organization's members, or member's employees?

3. Does the lobbying law restrict the *delivery* by a non-lobbyist employee of your organization of a campaign contribution made by one of your organization's members, or member's employee?

Discussion

[3] Wisconsin's lobbying law generally prohibits a lobbyist or an organization that employs a lobbyist to furnish anything of pecuniary value to an elected state official or candidate for state elective office. An exception is that the law permits a lobbyist and an organization that employs a lobbyist to furnish campaign contributions during certain statutorily established periods. The only restriction on campaign contributions, found in §13.625, *Wisconsin Statutes*, reduced to its elements, provides that:

No lobbyist or lobbying principal

May furnish

A campaign contribution

To a candidate for partisan elective state office or to a partisan elected state official running for any office

Except between June 1 and the general election in the year of the candidate's election and only when the legislature is not in session if the contribution is for a candidate to the legislature.¹

¹ Section 13.625(1) and (2), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

* * *

(b) Furnish to any agency official or legislative employee of the state or to any elective state official or candidate for an elective state office, or to the official's, employee's or candidate's personal campaign committee:

1. Lodging.

2. Transportation.

3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

[4] The only issue your questions raise is what it means to furnish a campaign contribution.

[5] Words in a statute must be construed according to common and approved usage. §990.01(1), *Wisconsin Statutes*. Common and approved usage can be determined by consulting a recognized dictionary. *Ervin v. City of Kenosha*, 159 Wis. 2d 464 (1991). Webster's *Third New International Dictionary* 923 (1986) defines "furnish" as "to provide or supply with what is needed, useful, or desirable." See also 80 Op. Att'y Gen. 205 (1992). The Wisconsin courts have adopted that ordinary usage.

[6] With respect to your first question, the Ethics Board previously has said that a principal's communicating with its members about a campaign contribution, as long as it is done independently of a candidate, is neither the furnishing of a campaign contribution nor the furnishing of anything else of pecuniary value to a candidate. 1992 Wis Eth Bd 30[4]. Similarly, your providing advice to others is not a furnishing of a contribution to a candidate. In these cases, you and your principal are urging or advising others to furnish contributions; neither you nor your principal is furnishing a campaign contribution.

[7] With respect to your second question, your physically conveying a campaign contribution to a candidate, albeit someone else's money, falls within the accepted definition of furnishing. In *State ex rel. Milwaukee G.L. Co. v. Arnold*, 190 Wis. 602, 604 (1926), the Wisconsin Supreme Court held that the phrase "furnishing gas for lighting or fuel or both" included "the means by which the gas is supplied to the customer for use."² And in *State v. Graves*, 257 Wis. 31, 34 (1950), the court held that a bartender who had sold and delivered beer to an adult with the knowledge that the adult was going

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

* * *

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

² In the *Arnold* case the Court addressed whether household appliances kept for sale by a utility company could be taxed under a statute that permitted a city to assess property used for "generating and furnishing gas for lighting or fuel or both." The Court said that without appliances the gas could not be used by customers and were, therefore, for furnishing gas.

to give the beer to a minor had “furnished” the beverage to the minor and could be prosecuted for violating a statute that forbade furnishing alcohol to a minor. Similarly, a merchant may be said to furnish a wide array of goods even though they are supplied by a wholesaler or be on consignment. There is nothing in the language of the statute to support an interpretation that “furnishing” does not mean the conveying of campaign contributions from others.

[8] Finally, the Ethics Board has said that a principal may not furnish indirectly through an agent that which it is prohibited from furnishing directly. 1992 Wis Eth Bd 29 [4], 1992 Wis Eth Bd 27 [7]; 80 Op. Att’y Gen. 205 (1992). This is based on the common sense notion that corporations and associations can act only through individuals. Thus, the organization should not, through an agent, deliver a campaign contribution at a time not permitted by §13.625.³

Advice

[9] The Ethics Board advises:

1. You may, without restriction from the lobbying law, advise your organization’s members, or their employees, about making campaign contributions as long as you are acting independent of any candidate or candidate’s campaign committee.
2. Campaign contributions collected from members of the lobbying organization, a circumstance popularly known as “bundling,” are best delivered by one of the contributors on behalf of the contributors without reference to the organization.⁴ Neither you (or anyone acting at your behest) nor anyone representing himself or herself as acting on behalf of the lobbying organization should physically convey campaign contributions to partisan elected state officials, or candidates for parti-

³ This restriction does not apply to the furnishing of a contribution by a principal’s political committee. See *Plumbers and Gas Fitters Local 75 Political Action Fund v. Wisconsin Ethics Board*, Dane County Circuit Court, 93 -CV-3984 (February 23, 1994), *aff’d*, District IV Court of Appeals, 94-0826 (May 19, 1995), Supreme Court, 94-0826 (September 27, 1995). The Board has not been asked to address whether a conduit administered by a principal may furnish a campaign contribution at a time not permitted by the lobbying law.

⁴ The lobbying law does not prevent an officer or member or employee of the lobbying organization to convey a contribution as long as the delivery is not by a lobbyist (or anyone acting at the lobbyist’s behest) or with the representation that the contribution is made on the organization’s behalf.

san state elective office, except during the statutorily authorized period.⁵

⁵ A campaign contribution may be made between June 1 and the date of the general election in the year of a candidate's election, provided that if the contribution is to a candidate for the legislature, then only if the legislature has concluded its final floor period and is not in a special or extraordinary session.