1997 Wis Eth Bd 9
LOBBYING LAW

While serving as a member of Wisconsin's legislature, a candidate for Congress may accept a campaign contribution from a lobbyist or lobbying organization for the purpose of promoting the legislator's candidacy for election to Congress only during the year of the Congressional election between June 1 and the date of the general election and only if the Wisconsin Legislature has concluded its final floorperiod and is not in special or extraordinary session. (September 5, 1997)

Facts

¶1. This opinion is based upon these understandings:

a. You write on behalf of a member of the Legislature.

b. The legislator is considering becoming a candidate for Congress.

Questions

¶2. The Ethics Board understands your questions to be:

1. What restrictions, if any, does the lobbying law impose on a member of the Legislature accepting campaign contributions from lobbying principals and lobbyists for the legislator's election to Congress?

2. Do state laws prohibit transferring funds from a candidate's campaign committee for state office to the candidate's campaign committee for federal office?

3. May a campaign committee for a candidate for state office make a contribution to a candidate for federal office?

Discussion

¶3. We will address your first question. Your other questions do not raise issues covered by laws administered by the Ethics Board. We refer you to the State of Wisconsin Elections Board and the Federal Election Commission for answers to those questions.

¶4. With certain qualifications, Wisconsin's lobbying law permits a lobbyist or an organization that employs a lobbyist to make a campaign contribution to a partisan elective state official "for the purpose of promoting the official's election to any national, state or local office" only in the year of a candidate's election between June 1 and the day of the general election.[1] *See* 1992 Wis Eth Bd 25. The restraints on a lobbyist's furnishing a campaign contribution to a Wisconsin legislator or his or her personal campaign committee also restrains the legislator's and campaign committee's acceptance of the lobbyist's contribution.

¶5. There is nothing in the statute's language or history that suggests, even remotely, that it applies to some legislators but not to those running for federal office or those with a federal campaign committee.[2] In considering the

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[1] Section 13.625(1)(c) and (2), *Wisconsin Statutes*, provides, in pertinent part:

> **13.625 Prohibited practices. (1)** No lobbyist may:
> (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 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:
> 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.

(Emphasis added).

[2] A "personal campaign committee," is defined in the statute to refer to a campaign committee established for the purpose of influencing any election in Wisconsin other than an election for national office. Section 13.62(11t), *Wisconsin Statutes*, provides:

matter in 1990, the Wisconsin Legislature amended the lobbying law, in 1989 Wisconsin Act 338, to apply the lobbying law's restrictions explicitly to campaign contributions to partisan elected officials running for non-state offices. The Legislative Reference Bureau's analysis of 1989 Assembly Bill 611, which was enacted as 1989 Wisconsin Act 338, states that the bill:

> Extends the prohibition [on furnishing campaign contributions to any candidate for elective state office except during the period from June 1 to the day of the general election] to apply to partisan elective state officials for the purpose of promoting the officials' election to national, state or local office.

The legislature apparently determined that the need to protect against actual and apparent undue influence that can arise from lobbyists' and their employers' furnishing campaign contributions to legislators at the same time they are trying to influence those legislators on matters before the legislature is paramount. Once the campaign period begins on June 1, lobbying principals may contribute to the candidates of their choice for national office to the full extent permitted under campaign finance laws. Thus, as we have said on two prior occasions, the lobbying law's restriction clearly applies to a state legislator running for Congress. 1993 Wis Eth Bd 9; 1992 Wis Eth Bd 25.

13.62 (11t) "Personal campaign committee" has the meaning given in s. 11.01(15).

Section 11.01(15), *Wisconsin Statutes*, provides:

> **11.01 (15)** "Personal campaign committee" means a committee which is formed or operating for the purpose of influencing the election or reelection of a candidate, which acts with the cooperation of or upon consultation with the candidate or the candidate's agent or which is operating in concert with or pursuant to the authorization, request or suggestion of the candidate or the candidate's agent.

Section 11.01(1), *Wisconsin Statutes*, provides:

> **11.01 (1)** "Candidate" means every person for whom it is contemplated or desired that votes be cast at any election held within this state, other than an election for national office . . . .

The definition of campaign committee to apparently exclude a committee established for a campaign for federal office does not appear to have significance for the reasons we discuss in the text, *infra*. Moreover, as we understand it, a personal campaign committee is, in essence, a candidate's agent for receiving and disbursing campaign contributions. To the extent this is so, a contribution made to a campaign committee is also a contribution to the candidate.

¶6. We note, as we have in the past, that an ambiguity arises as a result of the statute's referral to definitions of "candidate" and "campaign contribution" found in Chapter 11, *Wisconsin Statutes*. 1992 Wis Eth Bd 25. Section 13.62(5g), *Wisconsin Statutes*, provides that "candidate" "has the meaning given under s. 11.01(1)." Moreover, §13.625(1)(c) refers to campaign contributions "as defined in s. 11.01(6)." Section 11.01(1) provides:

> "Candidate" means every person for whom it is contemplated or desired that votes be cast and any election held within this state, *other than an election for national office*, whether or not the person is elected or nominated, and who either tacitly or expressly consents to be so considered.

(Emphasis added).

A "contribution" is defined in §11.01(6) as anything of value "made for political purposes." Section 11.01(16), provides:

> An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to *state or local office*, for the purpose of influencing the recall from or retention in office of an individual holding a *state or local office*, or for the purpose of influencing the outcome of any referendum.

(Emphasis added).

¶7. It has been suggested that §13.625's references to Chapter 11 could be read to restrict a lobbyist's ability to make a campaign contribution only to candidates for state or local office (since only such contributions are "contributions" within the definition) and to make such contributions only in the year in which an individual is a candidate for state or local office (since only such individuals are "candidates" within the definition). That suggested reading of the statute would result in nonsensical text and surplusage of language -- results to be avoided in statutory interpretation.[3]

¶8. Read literally, §13.625(1)(b) would permit a lobbyist to make a campaign contribution [that is, a contribution to promote a candidacy for *state or local office*] to a candidate for "*national office*." Read literally,

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[3] See, e.g., *State v. Pham*, 137 Wis. 2d 31 (1987) (statutes should be interpreted to avoid absurd or unreasonable results); *Green Bay Broadcasting v. Green Bay Authority*, 116 Wis. 2d 1 (1983) (in construing a statute, every word, clause and sentence should be given a construction that will not render it surplusage).

§13.625(1)(c) would provide that a lobbyist may make a campaign contribution [that is, a contribution to promote a candidacy for *state or local office*] for the purpose of promoting an official's election to "*national office.*" This reading is oxymoronic and would make all references to national office mere surplusage. We do not believe that reading comports with legislative intent. Clearly, the statute's references to the definitions in Chapter 11 were intended to be references to the general language describing the indicia of candidacy and the characteristics of contributions. The clear legislative intent is to permit a lobbyist to make campaign contributions to a partisan elective state official to promote the official's candidacy for a federal office only between June 1 and the day of the general election during the year in which the official stands for election to the federal office. 1992 Wis Eth Bd 25.

¶9. We also note that the Federal Election Commission has opined that the federal campaign finance law preempts the lobbying law's restrictions on campaign contributions from lobbyists and principals to candidates for federal office. (FEC Advisory Opinion 1993-25). That law provides:

> The provisions of this Act, and of rules prescribed under this Act supersede and preempt any provision of State law with respect to election to Federal office.

2 United State Code §453. However, a conference committee report states:

> It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded by the amendments to title 5, United States Code, made by this legislation.

S. Conf. Rep. No. 93-1237, 93d Cong., 2d Sess. *See also* 120 Cong. Rec. 34386 (Oct. 8, 1974).

As a result of this legislative history, the courts have said that the preemption language must be narrowly construed. *E.g., Weber v. Heaney*, 995 F.2d 872 (8th Cir. 1993); *Stern v. General Electric Co.*, 924 F.2d 472 (2d Cir. 1991).

¶10. In three cases, the courts have held that federal law does not preempt state restrictions on campaign contributions to candidates for federal office. *Stern v. General Electric Co., supra* (no preemption of New York law restricting corporations from making campaign contributions); *Reeder v. Kansas City Board of Police Commissioners*, 733 F.2d 543 (8th Cir. 1984) (no preemption of Missouri law prohibiting police department employees to make political contributions); *Pollard v. Board of Police Commissioners*, 665

S.W.2d 333 (Mo. 1984 (en banc), cert. den., 473 U.S. 907 (1985) (no preemption of Missouri law prohibiting police department employees to make political contributions).[4]

¶11. In two cases, the courts have held that federal law does preempt state restrictions. *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996) (federal law preempts Georgia law prohibiting state legislators from accepting any campaign contributions during legislative session);[5] *Weber v. Heaney*, *supra* (federal law preempts Minnesota law permitting federal candidates to accept voluntary spending limits and accept state funding).

¶12. Because the courts have not been uniform in their decisions, unless or until a court rules that the federal campaign finance law preempts Wisconsin's lobbying law, we cannot concur with the Federal Election Commission's opinion.

¶13. Finally, we note that §13.625(1)(c)1., *Wisconsin Statutes*, provides:

> **13.625(1)(c) 1.** A campaign contribution to a candidate for legislative office may be made during that period [in the year of a candidate's election between June 1 and the day of the general election] only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

The statute does not define "legislative office." However, elsewhere the statute uses the word "legislative" to refer to the Wisconsin legislature.[6]

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[4] In addition, Wisconsin's Attorney General, in a letter dated January 26, 1994, sent to the Federal Election Commission while the Commission still had its opinion under consideration, has said that federal law does not conflict with or preempt Wisconsin's lobbying law, citing *Kansas City Bd. of Police Com'rs*, *supra*, and *Pollard v. Board of Police Com'rs*, *supra*.

[5] In *Teper*, one judge of the three judge panel dissented, stating that the state's regulation was not of candidates for federal office but of legislators as legislators.

[6] *See* s.13.62(8) and (8m), *Wisconsin Statutes*. Section 13.62(8) provides:

> **13.62 (8)** "Legislative action" means the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any bill, resolution, amendment, report, nomination, administrative rule or other matter by the legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a legislator or employe of the legislature acting in an official capacity. "Legislative action" also means the action of the governor in approving or vetoing any bill or portion thereof, and the action of the governor or any agency in the development of a proposal for introduction in the legislature.

Section 13.62(8m) provides:

Thus, the most reasonable interpretation of §13.625(1)(c)1. is that the restriction pertains only to candidates for the Wisconsin legislature, not candidates for the United States Senate or House of Representatives. Nonetheless, we recommend, as a matter of good public policy, that a legislator running for federal office not accept campaign contributions except in accordance with the restriction contained in this part of the statute.

Advice

The Ethics Board advises:

¶14. That while serving as a member of Wisconsin's legislature, a candidate for Congress may accept a campaign contribution from a lobbyist or lobbying organization for the purpose of promoting the legislator's candidacy for election to Congress only during the year of the Congressional election between June 1 and the date of the general election and only if the Wisconsin Legislature has concluded its final floorperiod and is not in special or extraordinary session.

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13.62 (8m) "Legislative employe" means a member or officer of the legislature, an individual employed under s. 13.20 or an employe of a legislative service agency, as defined in s. 16.70(6).