

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, Wisconsin Room

Public Appearances by Teleconference Only: (608) 316-9000, 53081594#

Madison, Wisconsin

Tuesday, June 16, 2020, 9:00 a.m.

Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Administrator
- C. New Commissioner – Scot Ross
- D. Selection of Chair and Vice Chair
- E. Approval of Minutes of Prior Meetings
 - 1. Open Session Minutes for Meeting on February 25, 2020 Page 3
 - 2. Open Session Minutes for Meeting on March 10, 2020 Page 9
 - 3. Open Session Minutes for Meeting on April 20, 2020 Page 11
 - 4. Open Session Minutes for Meeting on May 8, 2020 Page 13
- F. Personal Appearances
- G. Review of 2017 ETH 03 Page 15
- H. Requests for Advice to be Issued by the Commission
 - 1. 2020 RA 05 Contributions to Partisan Elective State Officials by Lobbyists Page 33
 - 2. 2020 RA 10 General Public Exception and Permissible Use of Attendance Criteria Page 61
- I. Administrative Rules Update and Hearing Page 71
- J. Review of Ethics Opinions of Previous Boards Page 111
- K. Staff Report Page 131
- L. Consideration of Future Agenda Items
- M. Closed Session
 - 1. Requests for Advice
 - 2. Complaints and Investigations
 - 3. Personnel Matters
- N. Adjourn

Future Ethics Commission Meetings Scheduled:

- Tuesday, August 18, 2020 at 9:00 AM
- Tuesday, October 13, 2020 at 9:00 AM
- Tuesday, December 8, 2020 at 9:00 AM
- Tuesday, February 23, 2021 at 9:00 AM
- Tuesday, May 11, 2021 at 9:00 AM
- Tuesday, July 27, 2021 at 9:00 AM
- Tuesday, October 12, 2021 at 9:00 AM
- Tuesday, December 14, 2021 at 9:00 AM

The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), (h), or WIS. STAT. § 19.851. This notice is to inform the public that the Commission intends to convene in open session, but may move to closed session. The Commission plans to return to open session following that closed session, as outlined in the above agenda. WIS. STAT. § 19.85(2).

WIS. STAT. §§ 19.50 & 19.55(3) No employee of the Commission may disclose information related to an investigation or prosecution under ch. 11, subchapter III of ch. 13, or ch. 19.

WIS. STAT. § 19.85(1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

- (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (h) Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

WIS. STAT. § 19.851(2) The commission shall hold each meeting of the commission for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the commission in closed session under this section.



Wisconsin Ethics Commission

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Wisconsin Ethics Commission

101 E. Wilson Street
St. Croix Room
Madison, Wisconsin
February 25, 2020
9:00 a.m.

Open Session Minutes

Present: Pat Strachota, Tamara Packard, Paul Connell, Mac Davis, David Halbrooks, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Richard Bohringer, Harry Broderick, Colette Greve, Julie Nischik, and Caroline Russell

A. Call to Order

Commission Chair Pat Strachota called the meeting to order at 9:03 a.m.

B. Report of Appropriate Meeting Notice – Staff Counsel

Commission Chair Pat Strachota noted that appropriate meeting notice had been provided to the public and news media.

C. Approval of Minutes of Prior Meetings

MOTION: To approve the minutes from the open session meetings on December 3, 2019, December 19, 2019, and January 9, 2020. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously 5-0, Commissioner Connell abstained.

- 1. Open Session Minutes for Meeting on December 3, 2019**
- 2. Open Session Minutes for Meeting on December 19, 2019**
- 3. Open Session Minutes for Meeting on January 9, 2020**

D. Personal Appearances

There were no personal appearances by members of the public.

E. Administrative Rules Update and Hearing

Staff Counsel David Buerger presented the memo on page 13 of the meeting materials.

MOTION: For ETH 1, the Commission approved the proposed draft rule and directed staff to submit it and the associated documents to the Legislative Council Rules Clearinghouse. Moved by Commissioner Connell, seconded by Commissioner Packard. Motion carried unanimously.

MOTION: For ETH 21, the Commission directed staff to submit the proposed scope statement to the Department of Administration and the Office of the Governor for review and approval. Moved by Commissioner Packard, seconded by Commissioner Connell. Motion carried unanimously.

Commission Chair Pat Strachota opened the public hearing for ETH 26. There were no members of the public present to provide comments. The Chair closed the hearing.

MOTION: For ETH 26, the Commission approved of the statement of scope and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

F. Consideration of Guidance Document – Recall Committee Overview Manual

Staff Counsel David Buerger presented the memo on page 37 of the meeting materials.

MOTION: The Commission adopted the Campaign Finance Overview for Recall Committees. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

G. Formal Advisory Opinion Drafts Memo

Staff Counsel David Buerger presented the memo on page 61 of the meeting materials.

The Commissioners and staff discussed minor changes made to the advisory opinions based on feedback from the December closed session meeting.

MOTION: The Commission adopted the three advisory opinions, 2020 ETH 01, 2020 ETH 02, and 2020 ETH 03. Moved by Commissioner Packard, seconded by Commissioner Davis.

The Commission and staff discussed the process for the public to provide comments and feedback on the advisory opinions.

Motion carried unanimously.

- 1. 2020 ETH 01: Campaign Finance & Ethics – 50 Piece Rule and Mixed-Use Social Media Accounts**
- 2. 2020 ETH 02: Lobbying – Duties on Behalf of a Principal as Exclusive or Not Exclusive to Lobbying**
- 3. 2020 ETH 03: Campaign Finance – Application of 50 Piece Rule to Communications with Petitions Signatories and Newspaper Advertisements**

H. Review of Ethics Opinions of Previous Boards

Ethics Specialist Colette Greve presented the memo on page 105 of the meeting materials.

Commission staff noted that Eth. Bd. Op. 03-08 and 2013 GAB 01 will be brought back for discussion at the June meeting.

The Commission discussed revising Eth. Bd. Op. 98-12, to remove the specific reference to a \$100 speaking fee and consider any future speaking fees on a case-by-case basis.

MOTION: The Commission revised Eth. Bd. Op. 98-12 by removing the reference to a \$100 speaking fee, and as revised, affirm the opinion. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren.

Commission staff clarified that the revision would mean each circumstance is considered on a case-by-case basis.

Motion carried unanimously.

The Commission and staff discussed revising Eth. Bd. Op. 92-23.

MOTION: The Commission revised Eth. Bd. Op. 92-23, to remove references to the old Chapter 11 statutes. Moved by Commissioner Packard.

Commissioner Davis requested clarification of the motion, and Commissioner Packard noted the revision would remove the reference to forming a referendum committee, as the current statutes do not reference that.

Commissioner Connell seconded the motion.

Motion carried unanimously.

MOTION: The Commission withdrew Eth. Bd. Op. 03-04. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

The Commission and staff reviewed Eth. Bd. Ops. 95-07 and 03-16 and discussed WIS. STAT § 19.45(3) in reference to these two opinions. The discussion covered direct and indirect benefits to state public officials and others, and the offering, giving, and accepting of things of value by officials as well as officials soliciting things of value for either themselves or others. The Commission also considered how the interpretation of this statute might affect other lobbying related opinions issued by the Commission.

Commissioner Packard suggested using a three-part diagram of the statute:

Element A	Element B	Element C
No person may offer to an official...	...anything of value...	If it could reasonably be expected to influence the official's vote, official actions, or judgment.
No person may give to an official...		
No official may accept from any person...		If it could reasonably be considered as a reward for any official action or inaction on the part of the official.
No official may solicit from any person...		

MOTION: The Commission tabled the Eth. Bd. Ops. 95-07 and 03-16 for further discussion at the June meeting. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren.

The Commission discussed the statutory definition of “value”. The Commissioners requested the minutes from today’s meeting be circulated prior to the June meeting. Motion carried unanimously.

MOTION: The Commission reaffirmed Eth. Bd. Ops. 92-15, 92-19, 92-24, 93-04, 94-01, 94-08, 95-05, 96-15, 97-02, 97-04, 97-11, 98-08, 99-11, 03-11, and 2011 GAB 02, and tabled Eth. Bd. Op. 03-08 and 2013 GAB 01 for the June meeting. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

I. Establishment of Commission – Legislature Protocols

Commission Administrator Dan Carlton presented the memo on page 3 of the supplemental materials.

The Commissioners discussed hypothetical scenarios where consultation with the Chair and Vice Chair is sufficient, and when the Commission needs to convene for a decision. The Commission provided direction to the Administrator to consult with the Chair and Vice Chair when a legislative issue arises, and the Chairs will determine if the item is administrative or partisan. The Chairs may then call a special meeting with the Commission to have all the Commissioners provide a position for the Administrator to convey to the legislature. In a scenario where the Commission could not meet due to time restrictions, the Administrator would only provide information, and would not take a position.

J. IT Projects Report

Commission Administrator Dan Carlton presented the memo on page 113 of the meeting materials. The Commission took no action.

K. Staff Report

Commission Administrator Dan Carlton presented the memo on page 115 of the meeting materials. The Commission took no action.

L. Consideration of Future Agenda Items

Commission staff will provide a demonstration of the SEI system for candidates at the June meeting.

M. Closed Session

MOTION: To adjourn open session. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

Commissioner Davis asked for unanimous consent to rescind the prior motion. Seconded by Commissioner Van Akkeren. Motion carried unanimously.

MOTION: To go into closed session in accordance with the previously published notice. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

- 1. Requests for Advice**
- 2. Complaints and Investigations**
- 3. Personnel Matters**

N. Adjourn

MOTION: To adjourn. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously. Commissioner Connell absent.

Meeting adjourned at 4:34 p.m.

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February 25, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist

June 16, 2020

February 25, 2020 Wisconsin Ethics Commission meeting minutes certified by:

David R. Halbrooks, Vice Chair

June 16, 2020



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Wisconsin Ethics Commission

Teleconference Meeting
101 E. Wilson Street
Room 142
Madison, Wisconsin
March 10, 2020
4:00 p.m.

Open Session Minutes

Present: Pat Strachota, Tamara Packard, Paul Connell, Mac Davis, David Halbrooks, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Adam Harvell, and Julie Nischik

A. Call to Order

Commission Chair Pat Strachota called the meeting to order at 4:03 p.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton advised that appropriate meeting notice had been provided to the public and news media.

C. Closed Session

MOTION: To go into closed session. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren.

The Commission Chair advised the public that, if the motion was adopted, the Commission would convene in closed session to confer with legal counsel and to discuss complaints and investigations as permitted by WIS. STAT. §§ 19.85(1)(g) and 19.851(2).

Motion carried unanimously.

- 1. Conferring with Legal Counsel**
- 2. Complaints and Investigations**

D. Adjourn

MOTION: To adjourn. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously. Commissioners Connell and Packard absent.

Meeting adjourned at 5:06 p.m.

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March 10, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist

June 16, 2020

March 10, 2020 Wisconsin Ethics Commission meeting minutes certified by:

David R. Halbrooks, Vice Chair

June 16, 2020



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Wisconsin Ethics Commission

Teleconference Meeting
April 20, 2020
9:30 a.m.

Open Session Minutes

Present: Pat Strachota, Tamara Packard, Mac Davis, David Halbrooks, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Colette Greve, and Julie Nischik

A. Call to Order

Commission Chair Pat Strachota called the meeting to order at 9:34 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton advised that appropriate meeting notice had been provided to the public and news media.

C. Closed Session

MOTION: To convene in closed session, to confer with legal counsel. Moved by Commissioner Van Akkeren, seconded by Commissioner Halbrooks. Motion carried unanimously.

- 1. Request for Advice**
- 2. Complaints and Investigations**

D. Adjourn

MOTION: To adjourn. Moved by Commissioner Van Akkeren, seconded by Commissioner Packard. Motion carried by consensus, Commissioner Davis absent. Meeting adjourned at 11:06 a.m.

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April 20, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist

June 16, 2020

April 20, 2020 Wisconsin Ethics Commission meeting minutes certified by:

David R. Halbrooks, Vice Chair

June 16, 2020



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Wisconsin Ethics Commission

Teleconference Meeting
May 8, 2020
8:30 a.m.

Open Session Minutes

Present: Pat Strachota, David Halbrooks, Paul Connell, Mac Davis, Scot Ross, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Colette Greve, Julie Nischik, and Caroline Russell

A. Call to Order

Commission Chair Pat Strachota called the meeting to order at 8:32 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton advised that appropriate meeting notice had been provided to the public and news media.

C. Selection of Vice Chair

MOTION: Commissioner Davis nominated Commissioner Halbrooks to be the Vice Chair. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

D. 16.515 Request Update

Commission Administrator Daniel Carlton provided an update on the request submitted by staff. The Commission staff submitted the 16.515 request for \$20,000 to the DOA Secretary, and are awaiting further information.

E. June 16, 2020 Meeting Location

Commission Administrator Daniel Carlton suggested changing the meeting room for the June 16, 2020 meeting to the Wisconsin Room, to facilitate social distancing among the Commissioners, staff, and the public.

The Commissioners agreed it was a good idea to move the meeting to the larger room, and requested staff work with the security guard in the building prior to the meeting, to allow members of the public to attend the meeting without needing to sign into the building log.

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

F. Closed Session

MOTION: To convene in Closed Session for the purpose of considering advice as authorized by WIS. STAT. 19.85(1)(h). Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

1. Request for Advice

G. Adjourn

MOTION: To adjourn. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried by unanimously. Meeting adjourned at 9:15 a.m.

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May 8, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist

June 16, 2020

May 8, 2020 Wisconsin Ethics Commission meeting minutes certified by:

David R. Halbrooks, Vice Chair

June 16, 2020



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DATE: For the Commission Meeting on June 16, 2020

TO: Members, Wisconsin Ethics Commission

FROM: Daniel A. Carlton, Jr., Administrator

SUBJECT: Review of Opinion 2017 ETH 03

FOR COMMISSION ACTION

For this agenda item, the Commission may:

1. Affirm Opinion 2017 ETH 03; or
2. Revise Opinion 2017 ETH 03 consistent with today's discussion.

I. Introduction

Via letter dated July 7, 2017, an opinion was requested of the Commission concerning treatment of segregated funds of political parties or legislative campaign committees. At its meeting on August 22, 2017, the Commission considered that request and issued its formal opinion numbered [2017 ETH 03](#). Since that time, there has been concern regarding one of the statements in that opinion relating to application of contribution limits. The purpose of this agenda item is to review that holding and determine whether the Commission wishes to maintain or revise that holding.

II. Background

The request for this opinion sought confirmation of the following:

- Individuals may make unlimited monetary and in-kind contributions to a segregated fund. However, no organization or entity may make unlimited monetary and in-kind contributions to a segregated fund;
- Corporations, labor organizations, cooperatives, federally-recognized Indian tribes (“tribes”), political action committees and other persons (including non-resident PACs and section 527 organizations) may make contributions to a segregated fund of up to \$12,000 in a calendar year. The \$12,000 annual limit is an aggregate limit for both monetary and in-kind contributions;
- A political party or legislative campaign committee that establishes a segregated fund may not make disbursements from that fund in order to pay for express advocacy communications or to make monetary or in-kind contributions to candidates;

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

- A political party or legislative campaign committee may make disbursements from a segregated fund to support any political party or legislative campaign committee activities that are unrelated to direct candidate support and express advocacy;
- A segregated fund established by a political party or legislative campaign committee must remain separate from other accounts of the party or committee. A political party or legislative campaign committee may not make transfers between its other accounts and the segregated fund; and
- A political party or legislative campaign committee must report all contributions to a segregated fund and all disbursements made from the fund. All contributions must be itemized as well as disbursements in excess of \$20.

The references to contributions limits in the request were only related to the contribution limits applicable to the segregated fund. However, on page 2 of the opinion appears the following statement:

Also, as the segregated fund is not a separate entity, contribution limits apply globally, i.e., a PAC can only give \$12,000 per year to the party between general and segregated funds, not \$12,000 to each fund, unless otherwise pre-empted by federal law. *See* [FEC AO 2001-12](#).

In the time since the opinion was issued, the Commission’s staff has periodically received feedback that this statement incorrectly interpreted the applicable statutes. As a result, the Commission has directed staff to prepare a memo concerning this issue for the Commission’s consideration at this meeting.

III. Analysis

At issue are the contribution limit statutes in subch. XI, Ch. 11, of the Wisconsin Statutes. First, [WIS. STAT. § 11.1101](#) provides contribution limits for contributions to candidates from individuals, candidate committees, PACs, and “Other Persons.” Next, [WIS. STAT. § 11.1103](#) provides the applicable period for the contribution limits for candidates in WIS. STAT. § 11.1101(1) to (3). Finally, [WIS. STAT. § 11.1104](#) specifies that, subject to certain exceptions, contributions contained therein have no applicable limit. The first statute to consider is [WIS. STAT. § 11.1104](#), which, in pertinent part, provides:

11.1104 Exceptions. Except as provided in subs. (3) (b) and (4) (b) and s. 11.1112, the following contributions may be made in unlimited amounts:

...

(3)

- (a) Except as provided in par. (b), contributions to a legislative campaign committee.
- (b) A political action committee or a person subject to the limits under s. 11.1101(4) may contribute no more than \$12,000 in any calendar year to a legislative campaign committee.

(4)

- (a) Except as provided in par. (b), contributions to a political party.

(b) A political action committee or a person subject to the limits under s. [11.1101\(4\)](#) may contribute no more than \$12,000 in any calendar year to a political party.

(6) Contributions paid to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy, except that a political action committee or a person subject to s. [11.1101\(4\)](#) may contribute no more than \$12,000 in any calendar year to such a fund.

First, [WIS. STAT. § 11.1104\(3\)\(a\)](#) provides that contributions to a legislative campaign committee are unlimited. However, [WIS. STAT. § 11.1104\(3\)\(b\)](#) provides that a PAC or “Other Person” is only allowed to contribute a maximum of \$12,000 to a legislative campaign committee in any calendar year. Then, [WIS. STAT. § 11.1104\(4\)\(a\)](#) provides that contributions to a political party are unlimited. However, pursuant to [WIS. STAT. § 11.1104\(4\)\(b\)](#), a PAC or “Other Person” is only allowed to contribute a maximum of \$12,000 to a political party in any calendar year. Finally, [WIS. STAT. § 11.1104\(6\)](#) provides that contributions to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy are unlimited. However, under that subsection, a PAC or “Other Person” is limited to contributing \$12,000 to a segregated fund in any calendar year.

Another statute pertinent to this review is [WIS. STAT. § 11.1112](#), which provides:

11.1112 Corporations, cooperatives, and tribes. No foreign or domestic corporation, no association organized under ch. [185](#) or [193](#), no labor organization, and no federally recognized American Indian Tribe may make a contribution to a committee, other than an independent expenditure committee or referendum committee, but may make a contribution to a segregated fund as provided under s. [11.1104 \(6\)](#) in amounts not to exceed \$12,000 in the aggregate in a calendar year.

This provision prohibits corporations, associations, labor organizations, and federal recognized American Indian Tribes from making contributions to any committee other than an independent expenditure committee or a referendum committee. However, it allows these entities to make a contribution to a segregated fund up to \$12,000 in the aggregate for a calendar year.

Legislative Background

As the Commission is aware, the Legislature rewrote Chapter 11 of the Wisconsin Statutes in [2015 Act 117](#). The above-referenced provisions have mostly remained unchanged since that Act was enacted. However, in [2015 Act 261](#), the Legislature made some significant changes to [WIS. STAT. § 11.1104](#). According to staff of the Legislative Reference Bureau, the drafting files do not explicitly say what the intent was, but the chronological history may be instructive. Specifically, the original version of [2015 Assembly Bill 387](#) (the bill that became [2015 Act 117](#)) stated, in pertinent part:

11.1104 Exceptions. Except as provided in subs. [\(3\) \(b\)](#) and [\(4\) \(b\)](#) and s. [11.1112](#), the following contributions may be made in unlimited amounts:

...

11.1104(3)(b) A political action committee may contribute no more than \$12,000 in any calendar year to a legislative campaign committee.

11.1104(4)(b) A political action committee may contribute no more than \$12,000 in any calendar year to a political party.

11.1104 (6) Contributions paid to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee.

Then, [Senate Amendment 1 to 2015 AB 387](#) (Section 54) added the language related to express advocacy to read:

11.1104 (6) Contributions paid to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy.

So, as passed, the subsections originally provided the following:

- WIS. STAT. § 11.1104(3)(b) only limited contributions from a PAC to a legislative campaign committee to \$12,000 per year.
- WIS. STAT. § 11.1104(4)(b) only limited contributions from a PAC to a political party to \$12,000 per year; and
- Because the first sentence of WIS. STAT. § 11.1104 states, “Except as provided in subs. [\(3\)](#) [\(b\)](#) and [\(4\)](#)[\(b\)](#) and s. [11.1112](#), the following contributions may be made in unlimited amounts...,” WIS. STAT. § 11.1104(6) did not limit contributions from a PAC to a segregated fund of a legislative campaign committee or a political party.

The subsequent changes by [2015 Act 261](#) are as follows:

- In Section 100M of [2015 Act 261](#), the Legislature created [WIS. STAT. § 11.1101\(4\)](#) which added the “Other Persons” category and provided contribution limits for contributions from “Other Persons” to candidates.
- By inserting the underlined language, Section 100N amended [WIS. STAT. § 11.1104\(3\)\(b\)](#) to read “A political action committee or a person subject to the limits under s. 11.1101(4) may contribute no more than \$12,000 in any calendar year to a legislative campaign committee.” This amendment resulted in a \$12,000 per year limit on contributions from PACs and “Other Persons” to legislative campaign committees.
- By inserting the underlined language, Section 100P amended [WIS. STAT. § 11.1104\(4\)\(b\)](#) to read “A political action committee or a person subject to the limits under s. 11.1101(4) may contribute no more than \$12,000 in any calendar year to a political party.” This amendment resulted in a \$12,000 per year limit on contributions from PACs and “Other Persons” to political parties.

- By inserting the underlined language, Section 101 amended [WIS. STAT. § 11.1104\(6\)](#) to read “Contributions paid to a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy, except that a political action committee or a person subject to s. 11.1101(4) may contribute no more than \$12,000 in any calendar year to such a fund.” This Amendment resulted in a new \$12,000 annual limit on contributions from PACs and “Other Persons” to the segregated fund of a political party or legislative campaign committee.

According to the LRB, the above amendment to [WIS. STAT. § 11.1104\(6\)](#) was a late addition by [Senate Substitute Amendment 1](#) to [2015 Senate Bill 295](#) (which became [2015 Act 261](#)). The analysis of that amendment offers some insight into the understanding of these provisions at that time. Specifically, the analysis of that amendment provides:

SEGREGATED FUND CONTRIBUTIONS

This substitute amendment limits the amount that a political action committee may contribute to the segregated fund of a political party or legislative campaign committee to \$12,000 in any year. Current law limits the amount that a corporation, cooperative, labor organization, or tribe may contribute to a segregated fund to \$12,000 in any year. All other persons may contribute to the fund in unlimited amounts.

Application of Contribution Limits

The issue for the Commission’s review is whether these provisions result in a contribution limit of \$12,000 or \$24,000 total per year from a PAC or “Other Person” to a legislative campaign committee or political party.

[2017 ETH 03](#) states that, “as the segregated fund is not a separate entity, contribution limits apply globally, i.e., a PAC can only give \$12,000 per year to the party between general and segregated funds, not \$12,000 to each fund.” This reading may not be consistent with the plain language of the statute. To reach this conclusion, the Commission would have to determine that, because contributions are being made to one entity, the \$12,000 limit in [WIS. STAT. §§ 11.1104\(3\)\(b\)](#) and [\(4\)\(b\)](#) apply to both the general fund and the segregated fund of a legislative campaign committee or political party. The Commission could not rely on [WIS. STAT. § 11.1104\(6\)](#) for a globally applicable contribution limit because its express terms are limited to segregated funds and prohibit use of those funds for express advocacy and candidate contributions.

Reading that [WIS. STAT. §§ 11.1104\(3\)\(b\)](#) and [\(4\)\(b\)](#) apply globally results in [WIS. STAT. § 11.1104\(6\)](#) not being given full effect. It would essentially operate to lower the limits stated in the statutes. For example, if a PAC or “Other Person” gave \$12,000 to the general fund, it could then give nothing to the segregated fund. Alternatively, if a PAC or “Other Person” gave \$6,000 to the general fund, it would be limited to giving only \$6,000 to the segregated fund. However, the statutes expressly state that \$12,000 per year can be contributed to both the general fund and the segregated fund. It is well established in case law that statutes must be interpreted to give full effect to all words used in a statute and that no words are superfluous. While drafting errors occur, a

legislative drafter intending for there to be only one \$12,000 limit would not draft the statutes the way that these were drafted. Rather, the drafter would have explicitly referenced in [WIS. STAT. § 11.1104\(6\)](#) that contributions to segregated funds are subject to the limits provided in [WIS. STAT. §§ 11.1104\(3\)\(b\)](#) and [\(4\)\(b\)](#).

The legislative history further supports the interpretation that a PAC may contribute \$12,000 in a calendar year to the general fund of a political party or legislative campaign committee and may contribute an additional \$12,000 in a calendar year to the segregated fund of a political party or legislative campaign committee. The law originally created two classes of contributions. First, the law provided for a \$12,000 limit on contributions to the general fund of a political party or legislative campaign committee. These funds can be used for any purpose, including express advocacy and candidate contributions. Second, the law provided for unlimited contributions to a segregated fund which can only be used for purposes other than express advocacy or contributions to candidates. When drafting these provisions, the Legislature was clearly more concerned about contributions that were used for supporting candidates and express advocacy than it was about contributions to a segregated fund. While it limited contributions to the general fund, it did not limit contributions to the segregated funds. Clearly, the Legislature was treating these provisions as containing two separate limits (or, more accurately, one limited general fund and one unlimited segregated fund).

Further, the Legislature subsequently reviewed and amended [WIS. STAT. § 11.1104\(6\)](#). The Legislature, apparently desiring to limit contributions from PACs to the segregated funds as it had with corporate contributions to segregated funds, added the \$12,000 limitation in [WIS. STAT. § 11.1104\(6\)](#). In the staff analysis of the amendment, it is clear that the understanding was that there was both a \$12,000 limit to the general fund of a political party or legislative campaign committee and an authorization for a PAC to make contributions to a segregated fund in unlimited amounts. Taking subsequent action to limit contributions to a segregated fund indicates that the Legislature was concerned about the unlimited contributions originally allowed. At this time, had the Legislature been thinking that the law should limit contributions to \$12,000 total to the party or legislative campaign committee, it could have easily amended the statute to state that. Instead, it chose to maintain the two separate provisions, keeping the \$12,000 limit to the general funds of a political party or legislative campaign committee and reducing the segregated fund contributions to \$12,000. This amendment makes it even more clear that the Legislature intended to treat contributions to the general funds of the political party (or campaign committee) and contributions to its segregated funds separately. As the two provisions were maintained, the Commission should give full effect to both provisions.

Finally, though not applicable to the issue presented, it is important to note that another provision of the statutes creates two funds with two applicable limitations on contributions. [WIS. STAT. § 11.1112](#), quoted above, prohibits contributions by certain entities (i.e., corporations) to anyone other than an independent expenditure committee or referendum committee. However, that statute also allows contributions up to \$12,000 per year to a segregated fund of a political party or legislative campaign committee. The permissible use of these separate funds reveal why they are separate. The Legislature intended to limit the ability of the enumerated entities to participate in supporting candidates and engaging in express advocacy. However, the Legislature was apparently not as concerned with contributions that were not used for those purposes, so it allowed limited

contributions to the segregated funds. Clearly, the Legislature thought of these two classes of contributions being different and, therefore, subject to different limits.

IV. Conclusion

In reviewing [2017 ETH 03](#), the Commission is considering whether the total annual contribution limits for a PAC or “Other Person” is \$12,000 or \$24,000 (with a limit of \$12,000 to each fund). The Commission may either re-affirm that opinion or it may revise it consistent with today’s discussion. The plain language of the statutes indicates that the Legislature intended to create two funds with two separate limitations on contributions to them. Further, the legislative history of the bolsters this position. It did so in two original statutes. Then, even when it was revising contribution limits from PACs and “Other Persons” to political parties and legislative campaign committees, it chose to maintain the two separate provisions in the applicable statutes. As the Commission is required to give full effect to each provision of the statutes, the Commission may want to revise its opinion in [2017 ETH 03](#) to conclude that a PAC or “Other Person” can contribute each year \$12,000 to the general fund and an additional \$12,000 to the segregated fund of a political party or legislative campaign committee.

Enclosures: 2017 ETH 03

2017 ETH 03
CAMPAIGN FINANCE – SEGREGATED FUNDS

You are an attorney that advises organizations on campaign finance matters. You have asked for an advisory opinion regarding treatment under Chapter 11 of the segregated fund of a Wisconsin political party committee or legislative campaign committee.

Summary:

It is the opinion of the Commission that:

1. Individuals, which include sole proprietorships, partnerships, and certain LLCs, may make unlimited monetary and in-kind contributions to segregated funds. However, corporations, labor organizations, cooperatives, federally-recognized Indian tribes, political action committees and other persons may only make monetary and in-kind contributions to a segregated fund of up to \$12,000 in a calendar year.
2. A political party or legislative campaign committee may not make monetary or in-kind contributions to candidate committees or make disbursements for express advocacy using segregated funds.
 - a. A political party or legislative campaign committee may provide goods and services to a candidate which was paid for with segregated funds as long as it charges fair market value. It may not however design or produce express advocacy communications for use by a candidate regardless of whether the candidate is charged fair market value.
 - b. A political party or legislative campaign committee may make disbursements from a segregated fund to support any other political party or legislative campaign committee activities that are unrelated to direct candidate support or express advocacy.
3. A political party or legislative campaign committee must make disbursements directly from a segregated fund to pay permitted expenses. A political party or legislative campaign committee may not make general purpose or unrestricted transfers from a segregated fund to another account in order to finance express advocacy or contribute to candidates.
4. A political party or legislative campaign committee must report all contributions to a segregated fund as well as all disbursements made from the segregated fund. All contributions must be itemized as well as all disbursements in excess of \$20.

Analysis:

Segregated funds are separate accounts established and administered by either a party or legislative campaign committee that can accept contributions from otherwise prohibited sources like corporations, cooperatives, unincorporated associations, labor unions, and tribes; but those funds cannot be used for contributions to candidates or for express advocacy. WIS. STAT. §§ [11.1104\(6\)](#), [11.1112](#).

1. Contribution Limits on Segregated Funds

Contributions include both monetary and in-kind contributions. [WIS. STAT. § 11.0101\(8\)\(a\)1.-3](#). In-kind contributions of either goods or services are valued using their fair market value at

the time the contribution is made. [WIS. STAT. § 11.1105](#). Contribution limits do not distinguish between monetary and in-kind contributions and both types count towards the contributor's limit. WIS. STAT. §§ [11.1101](#), [11.1104](#).

Contributions to a segregated fund from individuals are not limited. [WIS. STAT. § 11.1104\(6\)](#). Contributions to a segregated fund from sole proprietorships, partnerships, and LLCs treated as sole proprietorships or partnerships by the Internal Revenue Service, are treated as contributions from the individuals involved, not the business, and are similarly not limited. WIS. STAT. §§ [11.1104\(6\)](#), [11.1113](#). Contributions to a segregated fund from any other person is limited to \$12,000 per year. WIS. STAT. §§ [11.1104\(6\)](#), [11.1112](#).

2. Prohibited Uses of Segregated Funds

Wisconsin law does not go into great detail regarding segregated funds. The only substantive description of segregated funds is with regard to segregated funds established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy. [WIS. STAT. § 11.1104\(6\)](#). The underlying premise appears to be that segregated funds as described in statute cannot be used for these purposes. This reading is strengthened by the fact that [WIS. STAT. § 11.1112](#) prohibits corporations, associations, unions, and tribes from making contributions to committees other than an independent expenditure committee, a referendum committee, or a segregated fund of a political party or legislative campaign committee.

Contributions to a political party or legislative campaign committee for express advocacy or contributions to candidates are subject to the source restrictions and contribution limits of WIS. STAT. §§ [11.1104](#) and [11.1112](#). Also, as the segregated fund is not a separate entity, contribution limits apply globally, i.e., a PAC can only give \$12,000 per year to the party between general and segregated funds, not \$12,000 to each fund, unless otherwise pre-empted by federal law. *See* [FEC AO 2001-12](#).

a. Express Advocacy

Express advocacy is defined as a communication that contains certain terms with reference to a clearly identified candidate and that unambiguously relate to the election or defeat of that candidate. [WIS. STAT. § 11.0101\(11\)](#). Disbursements for the purpose of express advocacy would include paying the costs of design, production, or dissemination of such a communication. While express advocacy can be independent or coordinated, the distinction is irrelevant for this analysis as either type of express advocacy would be outside the purpose of a segregated fund established under [WIS. STAT. § 11.1104\(6\)](#) and prohibited from such funds.

b. Contributions

A contribution occurs when a person makes a transfer of funds to a committee, or with the committee's consent transfers goods or services to a committee. [WIS. STAT. § 11.0101\(8\)](#). If goods or services are transferred in exchange for fair market value, no contribution has occurred, only a disbursement by the committee. Similar to the express advocacy prohibition

above, a political party or legislative campaign committee cannot use segregated funds to make a contribution to a candidate committee. [WIS. STAT. § 11.1104\(6\)](#).

3. Transfers from Segregated Funds


As described above, a segregated fund is merely a separate account (either an internal operating account or external bank account), not a separate legal entity. As the name implies, the funds in that separate account are segregated from other funds and subject to different rules than funds in the general political party or legislative campaign committee account. To respect the different character of the funds, the political party or legislative campaign committee cannot make general purpose or unrestricted transfers between the segregated fund and other accounts. While unlikely, the political party committee or legislative campaign committee may transfer funds into the segregated fund like any other donor. However, disbursements for permissible activity should come directly from the segregated fund.

4. Reporting of Segregated Funds

The G.A.B. previously determined in January 2016 that reporting of segregated funds is required under WIS. STAT. §§ [11.0304\(1\)](#) and [11.0404\(1\)](#), which require political parties and legislative campaign committees to report all contributions, disbursements, and obligations received, made, or incurred. The information required of segregated funds is the same as the reporting required of all other committees on their campaign finance reports:

- Date of the contribution or disbursement
- Name and address of each person or committee making a contribution
- Amount of the contribution
- Occupation, if any, for contributions in excess of \$200
- Itemized statement of each contribution made anonymously
- Itemized statement of each loan received in excess of \$20
- Itemized statement of every disbursement and obligation exceeding \$20 together with its purpose and the name and address of the person to which it was made
- Cumulative totals of contributions received, disbursements made, obligations incurred, and cash balance

As segregated funds will never be involved in disbursements for express advocacy or contributions to candidates, by definition a segregated fund need not file election-related reports (pre-primary, pre-election, etc.)



July 7, 2017

HAND DELIVERED

VIA HAND DELIVERY

Wisconsin Ethics Commission
212 East Washington Ave.
Madison, WI 53703

**Segregated Funds – Permitted
Contributions to and Disbursements**

Dear Chairperson Halbrooks:

Pursuant to Wis. Stat. § 19.46(2), we are seeking the Wisconsin Ethics Commission's (the "Commission's") opinion regarding treatment under Chapter 11 of the Wisconsin Statutes ("chapter 11") of the segregated fund of a Wisconsin political party committee ("political party") or legislative campaign committee (collectively, a "segregated fund"). We make this request in our personal capacity and not on behalf of a single client. In that context, the Commission's advisory opinion will benefit the numerous organizations we advise on campaign finance matters by confirming our understanding of permitted contributions to a segregated fund and interactions with the political party and legislative campaign committee that establishes and administers the fund. We do not advise political parties or legislative campaign committees.

Commission guidance on proper interactions with political parties and legislative campaign committees and proper uses of segregated funds is necessary since chapter 11 expressly addresses only the prohibited uses of such funds. Specifically, we are seeking confirmation of the following:

- Individuals may make unlimited monetary and in-kind contributions to a segregated fund. However, no organization or entity may make unlimited monetary and in-kind contributions to a segregated fund.
- Corporations, labor organizations, cooperatives, federally-recognized Indian tribes ("tribes"), political action committees and other persons (including nonresident PACs and section 527 organizations) may make contributions to a segregated fund of up to \$12,000 in a calendar year. The \$12,000 annual limit is an aggregate limit for both monetary and in-kind contributions.
- A political party or legislative campaign committee that establishes a segregated fund may not make disbursements from that fund in order to pay for express advocacy communications or to make monetary or in-kind contributions to candidates.

- A political party or legislative campaign committee may make disbursements from a segregated fund to support any political party or legislative campaign committee activities that are unrelated to direct candidate support and express advocacy.
- A segregated fund established by a political party or legislative campaign committee must remain separate from other accounts of the party or committee. A political party or legislative campaign committee may not make transfers between its other accounts and the segregated fund.
- A political party or legislative campaign committee must report all contributions to a segregated fund and all disbursements made from the fund. All contributions must be itemized as well as all disbursements in excess of \$20.

Source Restrictions and Contribution Limits

With the exception of independent expenditure committees (“IECs”) that may make contributions only to referendum committees and other IECs, source restrictions do not apply to segregated funds.¹ Accordingly, any of the following may contribute to a segregated fund.

- Individuals, including sole proprietorships, partnerships and certain limited liability companies;²
- Political action committees (“PACs”);³
- Other persons (including nonresident PACs and section 527 organizations);⁴
- Corporations;
- Cooperatives;
- Tribes; and,
- Labor organizations.

¹ Wis. Stat. § 11.0601(3)(b); 11.1112.

² Wis. Stat. § 11.1113.

³ Wis. Stat. § 11.1104(6).

⁴ Wis. Stat. §§ 11.1101(4); 11.1104(6).

Individuals, including sole proprietorships, partnerships and certain limited liability companies, may make unlimited contributions to a segregated fund. A contribution to a segregated fund by any other permissible contributor is limited to \$12,000 per calendar year and applies to monetary and in-kind contributions combined.⁵

Transferring tangible personal property or providing a service to a political party or legislative campaign committee at no cost or for a cost that is less than fair market value results in an in-kind contribution.⁶ It does not matter whether the political party or legislative campaign committee credits the item or service to a segregated fund or other party or committee account. In addition to office equipment and campaign supplies such as yard signs, handbills and bumper stickers, tangible personal property includes materials that may be used in campaign activities such as polling data, opposition research, campaign plans and strategy memorandums. Note that rather than fair market value, a poll is valued based on the actual costs and timeliness of the data.⁷ Services include consulting, creative, polling, phone banking and other campaign-related services as well as general support services such as legal, accounting and bookkeeping.

Chapter 11 neither establishes separate limits for monetary and in-kind contributions nor exempts in-kind contributions from the \$12,000 limit entirely. Accordingly, the aggregate value of any items or materials provided to a political party or legislative campaign committee by a single contributor (except an individual) may not exceed \$12,000 in a calendar year when credited to a segregated fund.

Use of Segregated Funds

Under chapter 11, legislative campaign committees and state and local parties may establish and administer segregated funds for purposes other than making contributions to candidates or making disbursements for express advocacy.⁸

Prohibited Uses

Express Advocacy

Under this general prohibition, a political party or legislative campaign committee may not pay for an express advocacy communication with segregated funds, regardless of whether it is independent or coordinated.⁹ A disbursement for express advocacy includes the costs

⁵ Wis. Stat. § 11.0101(8)(a)1.-3.

⁶ Wis. Stat. § 11.1105.

⁷ Wis. Stat. § 11.1111.

⁸ Wis. Stat. § 11.1104(6).

⁹ See Wis. Stat. §§ 11.0101(16); 11.1104(6); 11.1203(1).

attributable to both production and dissemination.¹⁰ Accordingly, a political party or legislative campaign committee may not use segregated funds to design, produce or disseminate express advocacy communications. This includes designing or producing express advocacy communications for dissemination by a candidate.

Contributions

The prohibition on making contributions to candidates with segregated funds applies to both monetary and in-kind contributions.¹¹ Accordingly, a political party or legislative campaign committee that provides a candidate with services or materials that were paid for with segregated funds has made an illegal in-kind contribution if provided for free or for less than fair market value. As a result, a political party or legislative campaign committee may not do the following:

- Pay the salary of a candidate's campaign manager or other campaign staff with segregated funds.
- Pay political party or legislative campaign committee staff with segregated funds if that staff provides campaign services to candidates such as a campaign plan, message development, direct mail or advertising design, advertising buys or campaign finance reporting, unless the candidate pays fair market value for the services. If a staff member's job duties include both direct candidate support and party or committee activities, segregated funds may pay for a portion of his or her salary attributable to party or legislative campaign committee activities.
- Pay vendors with segregated funds for services provided directly to candidates such as advertising or direct mail production, list development, advertising buys, polling, printing, telephone banking, robocalls or fundraising.
- Provide materials to candidates that were paid for with segregated funds including mailing lists, walk lists, campaign plans, opposition research and polling data, unless the candidate is charged fair market value.

Permitted Uses

Permitted uses of segregated funds are not enumerated in statute. Thus, a disbursement in support of party or legislative campaign committee activities that is not made to fund express advocacy and that does not result in an in-kind contribution to a candidate is allowed. For example, a political party or legislative campaign committee may pay for the following with segregated funds.

¹⁰ See Wis. Stat. § 11.0101(10)(a).

¹¹ Wis. Stat. § 11.0101(8)(a).

- Voter registration and get-out-the vote activities on behalf of a political party but not on behalf of a specific candidate. This includes the cost of materials, staff training and the salary and other compensation of field staff.
- The salary and other compensation of office staff who do not provide direct support to candidate campaign activities.
- The expenses related to candidate recruitment including staff salaries, polling and travel expenses. The political party or legislative campaign committee may share with individuals being recruited polling data and other documents created for this purpose.
- Opposition research for its own use and not for use by any candidate.
- Polling for its own use and not for use by any candidate.
- Office space and equipment.
- Fundraising for the political party or legislative campaign committee, but not for any candidate.
- Campaign schools.
- Conventions and other party or legislative campaign committee events.

Fund Transfers

Under chapter 11, a segregated fund may be “established and administered” only by a political party or legislative campaign committee.¹² It is an account – either an internal operating account or a unique bank account – of a political party or legislative campaign committee and not a legal entity.¹³ It is not a political committee¹⁴ or an other person which includes nonresident PACs and section 527 political organizations.¹⁵

¹² Wis. Stat. § 11.1104(6).

¹³ See 2017 ETH 02. “Segregated funds are separate accounts established and administered by either a party or legislative campaign committee that can accept contributions from otherwise prohibited sources...”

¹⁴ See Government Accountability Board (G.A.B.), Minutes of Open Session, January 12, 2016. The former G.A.B. had significant discussions at a December 2015 and January 2016 meeting regarding the campaign finance reporting duties of a political party or legislative campaign committee related to a segregated fund that it establishes and administers.

¹⁵ Note that other persons may contribute to candidates while segregated funds may not. See Wis. Stat. § 11.1101(4).

A segregated fund is required if a political party or legislative campaign committee wishes to accept contributions from otherwise restricted sources. But the party or committee must then abide by restrictions on the disbursement of those funds related to candidate contributions and express advocacy. Consequently, a political party or legislative campaign committee may not make general purpose or unrestricted transfers from a segregated fund to another political party or legislative campaign committee account. Such a transfer would allow the use of segregated funds for candidate contributions and express advocacy. If the legislature intended this result, creating separate segregated funds and restricting disbursements made from them was wholly unnecessary.

Accordingly, a political party or legislative campaign committee may make disbursements from a segregated fund only to pay permitted expenses as outlined above. Moreover, this can only be done by paying the permitted expense directly from the segregated fund.

Reporting

A political party or legislative campaign committee that establishes a segregated fund must disclose all contributions, disbursements, and obligations received, made or incurred by the fund.¹⁶ It must submit periodic campaign finance reports with the following information regarding a segregated fund:

- The name and address of each person or committee making a contribution together with the amount of the contribution.¹⁷
- The occupation of each individual whose cumulative contributions in a calendar year are in excess of \$200.¹⁸
- An itemized statement of every disbursement and obligation exceeding \$20 together with its purpose and the name and address of the person to which it was made.¹⁹
- An itemized statement of each loan received in excess of \$20.²⁰

¹⁶ Wis. Stat. §§ 11.0304(1), 11.0404(1); *see also* Government Accountability Board, Minutes of Open Session, January 12, 2016.

¹⁷ Wis. Stat. §§ 11.0304(1)(a)1., 2.; 11.0404(1)(a)1., 2.

¹⁸ Wis. Stat. §§ 11.0304(1)(a)3.; 11.0404(1)(a)3.

¹⁹ Wis. Stat. §§ 11.0304(1)(a) 8., 9.; 11.0404(1)(a)8., 9.

²⁰ Wis. Stat. §§ 11.0304(1)(a)7.; 11.0404(1)(a)7.

- Cumulative totals of contributions received, disbursements made, obligations incurred and cash balance.²¹

Conclusion

In sum and based on the forgoing, we are seeking the Commission's confirmation of our interpretation of state law:

- Corporations, labor organizations, cooperatives, federally-recognized Indian tribes, political action committees and other persons may make monetary and in-kind contributions to a segregated fund of up to \$12,000 in a calendar year. Only individuals, which include sole proprietorships, partnerships and certain LLCs, may make unlimited contributions.
- A political party or legislative campaign committee may not make monetary or in-kind contributions to candidate committees or make disbursements for express advocacy using segregated funds.
 - A political party or legislative campaign committee may provide goods and services to a candidate which were paid for segregated funds as long as it charges fair market value. It may not however design or produce express advocacy communications for use by a candidate regardless of whether the candidate is charged fair market value.
 - A political party or legislative campaign committee may make disbursements from a segregated fund to support any other political party or legislative campaign committee activities that are not undertaken to provide direct support to a candidate or to further express advocacy.
- A political party or legislative campaign committee must make disbursements directly from a segregated fund to pay permitted expenses. A political party or legislative campaign committee may not make general purpose or unrestricted transfers from a segregated fund to another account. Moreover, it may not transfer segregated funds to another account in order to finance express advocacy or contribute to candidates.
- A political party or legislative campaign committee must report all contributions to a segregated fund as well as all disbursements made.

²¹ Wis. Stat. §§ 11.0304(1)(a)5., 6., 10., 11.; 11.0404(1)(a)5., 6., 10., 11.

Wisconsin Ethics Commission

July 7, 2017

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Please let us know if you have questions or need any additional information. We look forward to receiving the Commission's reply.



cc: Brian Bell (via hand delivery)
David Buerger (via hand delivery)





Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the Commission Meeting on June 16, 2020

TO: Members, Wisconsin Ethics Commission

FROM: Colette Greve, Ethics Specialist

SUBJECT: Formal Opinion – Lobbyist Contributions to Partisan Elective State Officials

FOR COMMISSION ACTION

1. Does the Commission approve the attached draft advisory opinion?
2. Does the Commission direct staff to offer an advisory opinion that differs from the attached draft consistent with its discussion today?
3. Does the Commission refuse to offer an opinion?
 - a. If so, does the Commission choose to refer the matter to the Attorney General?
 - b. If so, does the Commission choose to refer the matter to the standing legislative oversight committees?

Background

Staff received the attached request for advice (see Attachment A) on January 15, 2020, from Attorney Mike Wittenwyler and presented the attached memorandum (see Attachment B) to the Commission for their review at the Commission meeting on February 25, 2020. This request for advice followed the Commission’s most recent audit for lobbyist contributions. The Commission determined at its meeting on December 19, 2019, that due to the changes in the applicable statutes in 2015, specifically, the removal of the phrase “in the year of a candidate’s election,” lobbyists may contribute to all partisan elective state officials during the period of time specified by statute, regardless of whether that partisan elective state official is circulating nomination papers to have their names placed on the ballot in that year. This is a change from the way the statutes were applied in prior lobbyist contribution audits. Attorney Wittenwyler’s request for advice sought clarification as to the Commission’s interpretation and application of Chapter 13 to lobbyist contributions to partisan elective state officials and candidates for partisan elective state office.

At the meeting on February 25, 2020, the Commission directed staff to issue a formal opinion based on the Commission’s discussion at that meeting, present it to the Commission for review at today’s meeting, and also draft a letter to the Legislature requesting confirmation of the Commission’s interpretation of the relevant statutory sections.

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

Attachments C, D, and E are for the Commission's review at today's meeting.

Attachments

- A. Request for Advice – Attorney Mike Wittenwyler
- B. Memorandum from Commission Meeting on February 25, 2020
- C. Draft Advisory Opinion for Attorney Wittenwyler – 2020 RA 05
- D. Formalized/Anonymized 2020 RA 05 for Publication
- E. Draft Letter to the Legislature

January 15, 2020

VIA HAND DELIVERY

Wisconsin Ethics Commission
101 East Wilson, Suite 127
Madison, WI 53703

**Contributions to Partisan Elective State
Officials by Lobbyists**

Dear Chairperson Strachota:

Pursuant to Wis. Stat. § 19.46(2), we are seeking the Wisconsin Ethics Commission's (the "Commission's") opinion regarding the application of Chapter 13 of the Wisconsin Statutes ("chapter 13") to a contribution by an individual licensed as a lobbyist under Wis. Stat. § 13.63(1) (hereinafter "lobbyist") to the committee of a partisan elective state official. Specifically, we are seeking confirmation that it is the Commission's position that a lobbyist may contribute to the committee of any partisan elective state official during the period of time between when the first day authorized by law for the circulation of nomination papers and the day of the general or special election, subject to unique restrictions on contributions to members of the state Legislature.¹ In other words, a lobbyist may contribute to all partisan elective state officials during this time period and not only those partisan elective state officials circulating nomination papers to have their names placed on the ballot.

BACKGROUND

A lobbyist may contribute personal funds to any candidate for state, local or federal office in Wisconsin, as well as any state or local committee.² However, a lobbyist's personal contribution to a partisan elective state official, a candidate for partisan elective state office or the candidate committee of either must be made during a specific pre-election period, applicable to both general and special elections i.e., the contribution window.

¹ See Wis. Stat. § 13.625 (1m)(b), (b)1.

² Although a lobbyist may not give anything of pecuniary value to an elective state official (i.e., governor, lieutenant governor, secretary of state, state treasurer, attorney general, state senator or state representative to the assembly) or a candidate for elective office, campaign contributions are excluded under both the state code of ethics and the lobbying law. See Wis. Stat. §§ 13.625(1)(b)3; 19.42(1).

A lobbying firm or lobbying principal that is organized as a partnership or as a limited liability company that is treated as a partnership under the Internal Revenue Code must also abide by the window. See Wis. Stat. §§ 11.1113; 13.625(2). Lobbying firms and principals that are organized as corporations are prohibited from making contributions to candidates at all times. See Wis. Stat. § 11.1112.

- Contributions to a state legislator, governor, lieutenant governor, secretary of state, state treasurer or attorney general or a candidate for such office may be made between the date nomination papers may be circulated and the day of the general or special election.³
- Contributions to candidates for the state Senate or state Assembly are subject to an additional restriction. Such contributions may be made during the above contribution window as long as the legislature has concluded its final floorperiod and is not in special or extraordinary session.⁴ If the legislature concludes its final floorperiod or a special or extraordinary session after nomination papers may be circulated, the contribution window opens upon its conclusion. Similarly, if the legislature convenes a special or extraordinary session after the contribution window has opened, the contribution window will close until such session is adjourned.

In 2015, the contribution window statute was amended to incorporate revisions to the name of candidate committees and the definition of candidate in Chapter 11 of the Wisconsin Statutes and to clarify the window's application.⁵ The amendments expressly clarified that the contribution window applies to only personal contributions by lobbyists and that lobbyists may deliver PAC, conduit and other contributions that are not personal contributions of the lobbyist at any time. The contribution window statute has not been amended since 2015.

Since its creation in 2016, the Commission has advised that the contribution window opens for a partisan elective state official when he or she is seeking ballot access for that specific election. According to the Commission's Campaign Finance Overview, most recently updated in July 2019, "[r]egistered lobbyists are prohibited from making campaign contributions to state candidates for partisan state office except between the first day authorized to circulate nominations papers, if the legislature is not in session, and the day of the general election in the year of the candidate's election."⁶ In October 2019, a number of lobbyists received a Notice of Audit Findings: Lobbyist Contributions Audit ("Notice") indicating that a contribution may have been improperly made during the contribution window for the 2018 general election⁷ because it was made to a state Senator who was not on the ballot in 2018. In December 2019, Commission staff notified lobbyists who received a Notice that the "Commission determined that the contributions were permissible and, therefore, there was no violation of Wis. Stat. § 13.625(1m)."⁸

³ Wis. Stat. § 13.625(1m)(b).

⁴ Wis. Stat. § 13.625(1m)(b)1.

⁵ 2015 Wisconsin Act 117.

⁶ See Campaign Finance Overview State Candidate Committees, Wisconsin Ethics Commission, July 2019, p. 12 (emphasis added).

⁷ The contribution window for the 2018 general election was April 15, 2018 through November 6, 2018 except that it did not open for state legislative candidates until May 10, 2018.

⁸ Since the Commission's decision was made in closed session, it is unclear why it reversed its position. No Legislative Reference Bureau ("LRB") or Legislative Council documents indicate that the amendments in 2015 Wisconsin Act 117 ("Act 117") were intended to expand the window to allow personal contributions to all candidates for partisan elective state office, regardless of whether they will appear on the ballot. Neither the LRB summary of 2015 Assembly Bill 387 (enacted as Act 117) nor Legislative Council Information Memorandum 2016-

ANALYSIS

Under Wis. Stat. § 13.625, a lobbyist may make the following contributions with personal funds only during the contribution window:

- To a partisan elective state official for the purpose of promoting the official's election to any national, state or local office.⁹
- To a candidate for partisan elective state office to be filled at the general or special election.¹⁰
- To the candidate committee of a partisan elective state official or candidate for partisan elective state office.¹¹

The contribution window for a general election is April 15 through the date of the general election. It may open after April 15 for state legislators and candidates for the state legislature if any floor periods are scheduled after April 15 and it will close again if the legislature convenes a special or an extraordinary session. The contribution window for a special election is the date on which nomination papers may be circulated through the date of the special election.

As previously applied, the contribution window limited both when lobbyists may contribute personal funds and to whom they may contribute. That is, the contribution window opened only for candidates seeking to appear on the ballot in that election. If the contribution window opens for a state senator who is not on the ballot, then it must also open for all partisan elected state officials. The contribution window's application to a state senator differs from other public officials only in its length. Also, if the contribution window applicable for a general election applies to all partisan elected state officials then so must the contribution window for a special election. Finally, lobbyist contributions made during this period may be made to a local, state or federal committee of a partisan elected state official.

01 on Act 117 described such a significant change to the contribution window. Prior to 2014, the contribution window opened on June 1 in the year of the candidate's election. 2013 Wisconsin Act 153 replaced that date with a reference to the circulation of nomination papers so that the contribution window opens at the time a candidate begins seeking ballot access rather than on an arbitrary date. Both before and after the 2015 amendments, the statute expressly references nomination papers so that the window opens only for candidates seeking ballot access in that election. If the legislature intended to broaden the window's application to all candidates for partisan elective state office in Act 117, it would have replaced the reference to the circulation of nomination papers with a specific date.

⁹ Wis. Stat. § 13.625(1m)(a)1., (1m)(b).

¹⁰ Wis. Stat. § 13.625(1m)(a)2., (1m)(b).

¹¹ Wis. Stat. § 13.625(1m)(a)3., (1m)(b).

PERMISSIBLE LOBBYIST CONTRIBUTIONS

Following the Commission's December decision, it appears that lobbyists may contribute to the candidate committee of any state senator during the contribution window that opens prior to a general election, regardless of whether the state senator is on the ballot. Accordingly, the following lobbyist contributions are also permissible under this interpretation:

- To the lieutenant governor, secretary of state, state treasurer or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
- To any partisan elective state official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or the candidate is on the ballot.
- To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or the partisan official is on the ballot.
- To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

CONCLUSION

In sum and based on the forgoing, we are seeking the Commission's confirmation that a lobbyist may contribute personal funds, subject to applicable contribution limits, to all partisan elective state officials and candidates for partisan elective state office during any open contribution window. Specifically, (1) that a lobbyist may contribute to the local, state or federal committee of any partisan elective state official during any contribution window that opens for a general or special election and (2) that a lobbyist may contribute to the candidate committee of a candidate for partisan elective state office during any contribution window that opens for a general or special election.

Please let us know if you have questions or need any additional information. We look forward to receiving the Commission's reply.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler
Jodi Jensen



Wisconsin Ethics Commission

Attachment B

Campaign Finance | Lobbying | Ethics
101 East Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the Commission Meeting on February 25, 2020

TO: Members, Wisconsin Ethics Commission

FROM: Colette Greve, Ethics Specialist

SUBJECT: Informal Opinion - Contributions to Partisan Elective State Officials by Lobbyists

FOR COMMISSION ACTION

1. Does the Commission direct staff to offer an informal or formal advisory opinion based on today's discussion?
 - a. If so, does the Commission choose to also seek clarification from the Legislature on the statutory language related to the contribution window?
2. Does the Commission refuse to offer an opinion?
 - a. If so, does the Commission choose to refer the matter to the Attorney General?
 - b. If so, does the Commission choose to refer the matter to the standing legislative oversight committees?

I. Introduction

This request for advice follows the Commission's most recent audit for lobbyist contributions. The Commission determined at its meeting on December 19, 2019, that due to the changes in the applicable statutes in 2015, specifically, the removal of the phrase "in the year of a candidate's election," lobbyists may contribute to all partisan elective state officials during the period of time specified by statute, regardless of whether that partisan elective state official is circulating nomination papers to have their names placed on the ballot in that year. This is a change from the way the statutes were applied in prior lobbyist contribution audits. After the meeting on December 19, 2019, Commission staff followed up with the lobbyists identified as having given to state senators not on the ballot in 2018, but during the window, and informed them that there was no settlement being issued, as the contributions made were permissible.

Staff received the attached request for advice (see Attachment A) on January 15, 2020, from Attorney Mike Wittenwyler. The request seeks an opinion regarding the application of Chapter 13 of the Wisconsin Statutes to a contribution by a licensed lobbyist to a campaign finance committee of a partisan elective state official. Specifically, the advice seeks clarification of the Commission's position that a lobbyist may contribute to a committee of any partisan elective state official during

the period of time between the first day authorized by law for the circulation of nomination papers and the general or special election, subject to restrictions on contributions to members of the State Legislature.

There are several options for Commission action for this matter:

1. The Commission may choose to direct staff to draft an opinion in response to Attorney Wittenwyler's request based on today's discussions.
2. The Commission could choose to, in addition to an opinion, also direct staff to draft a letter to amend the relevant statutory sections.
3. The Commission may choose to not issue an opinion.
4. The Commission may choose to not issue an opinion, but rather refer the matter to the Attorney General.
5. The Commission may choose to not issue an opinion, but rather refer the matter to the standing legislative oversight committees?

II. Analysis

The relevant statute sections implicated for this request for advice are as follows:

[WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides in relevant part:

- (1) "Candidate" means an individual about whom any of the following applies:
 - (c) The individual holds a state or local office.

[WIS. STAT. § 13.625\(1\)](#) provides in relevant part:

- (1) No lobbyist may:
 - (b) Give to ... to any elective state official or candidate for an elective state office, or to the candidate committee of the official, employee, or candidate:
 3. ..., money or any other thing of pecuniary value, except that a lobbyist may deliver a contribution or make a personal contribution to a partisan elective state official or candidate for national, state or local office or to the candidate committee of the official or candidate; but a lobbyist may make a personal contribution to which sub. [\(1m\)](#) applies only as authorized in sub. [\(1m\)](#).

[WIS. STAT. § 13.625\(1m\)](#) provides in relevant part:

- (1m)
 - (a) Except as provided in par. [\(b\)](#), a lobbyist may not do any of the following:
 1. Make a personal contribution to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office.
 2. Make a personal contribution to a candidate for a partisan elective state office to be filled at the general election or a special election.

3. Make a personal contribution to the candidate committee of a partisan elective state official or candidate for partisan state elective office.

(b) A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

1. A contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.
2. A contribution by a lobbyist to the lobbyist's candidate committee for partisan elective state office may be made at any time.

Chapter 13 of the Wisconsin Statutes generally prohibit lobbyists from providing anything of value to a partisan elective state official. However, Chapter 13 contains an exception to this general prohibition, that a lobbyist may make personal contributions to partisan elective state officials who are candidates for state office during a specific time period (“contribution window”). The contribution window is from the first day that nomination papers may be circulated through the day of the general or special election. For partisan elective state officials who are legislators the contribution window does not start until the legislature concludes its final floorperiod and is not in a special or extraordinary session. Therefore, if the legislature is still in session at the time when nomination papers may be circulated, the contribution window opens once the session concludes. If the legislature convenes in special or extraordinary session after the contribution window has opened, the window closes until such session is adjourned.

Legislative History

[WIS. STAT. § 13.625](#) was amended by 2013 Wisconsin Act 153 (“2013 Act”) and 2015 Wisconsin Act 117 (“2015 Act”). The amendments were as follows (emphasis added to highlighted portions):

2013 Act

13.625 (1) (c) (intro.) of the statutes is amended to read:

13.625 (1) (c) Except as permitted in this subsection, personally 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 to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or ~~his or her~~ to the personal campaign committee ~~may be made of the official or candidate in the year of a candidate's election~~ between ~~June 1~~ the first day authorized by law for the circulation of nomination papers as a candidate at a

general election or special election and the day of the general election or special election, except that:

There are three relevant amendments from the 2013 Act for this matter:

1. Clarified that lobbyists may not make *personal* contributions, except during the contribution window,
2. Changed the start date for the contribution window from June 1 to “the first day authorized by law for the circulation of nomination papers,” and
3. Added special elections to the end date for the contribution window, meaning that there would be a contribution window for special elections due to this amendment.

2015 Act

13.625 (1) (c) (intro.) of the statutes is renumbered 13.625 (1m) (a) (intro.) and amended to read:

13.625 (1m)

(a) Except as ~~permitted~~ provided in this subsection, personally make par. (b), a lobbyist may not do any of the following:

1. Make a ~~campaign~~ personal 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

2. Make a personal contribution to a candidate for a partisan elective state office to be filled at the general election or a special election; or

3. Make a personal contribution to the ~~official's or candidate's~~ ~~personal~~ ~~campaign~~ candidate committee of a partisan elective state official or candidate for partisan state elective office.

(b) A lobbyist may ~~personally~~ make a ~~campaign~~ personal contribution to a partisan elective state official or candidate for partisan elective state office or to the ~~personal~~ campaign candidate committee of the official or candidate in the year of a candidate's election between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

The 2015 Act made one significant change related to this matter. In addition to changes in the numbering and order of the statute section, the Legislature removed the phrase “in the year of the candidate’s election” which preceded the statement of the start date for the contribution window.

The major change in 2013 was changing the time period of the contribution window from a specific date, June 1, to “the first day authorized by law for the circulation of nomination papers...” Attorney Wittenwyler contends that this specific reference to nomination papers restricts the window to open only for candidates seeking ballot access in that election. Further, he states that if the Legislature had intended to broaden the application of the contribution window to all candidates for partisan state elective office, the 2015 Act would have replaced the reference to first date it is

authorized by law to circulate nomination papers (for general election this is always April 15) with a specific date, such as how it had previously been written before the 2013 Act amendment.

Attorney Wittenwyler's request does not address another major change that occurred through the 2015 Act. The 2015 Act explicitly removed the phrase "in the year of a candidate's election," which preceded the description of the time period of the contribution window "between the first day authorized by law for the circulation of nomination papers...." Prior to the 2015 Act, this phrase "in the year of the candidate's election" limited the contribution window's application to those partisan state elective officials who were on the ballot that year. The explicit removal of this phrase opened the lobbyist contribution window to those candidates that were not on the ballot for that year's election.

In drafting the memorandum for the lobbyist contributions audit that was taken up at the December 19, 2019, Commission meeting, Administrator Carlton requested clarification on the legislative history from Legislative Reference Bureau ("LRB"), specifically the removal of "in the year of the candidate's election." The LRB informed that the removal of this phrase was part of the original version of the assembly bill. In the drafting files for the companion senate bill, the change did not occur until a later version. (Attachment C). In the drafting file there is a comment with the removal that states "This section addresses the 'window for contributions' question." It appears that the Legislature intentionally struck this phrase to change the statutory window from applying to only those candidates on the ballot to all candidates for state elective office, even if not on that year's ballot.

At the December 19, 2019, Commission meeting, the question for the Commission's consideration was whether the window opens only for partisan elective state public officials on the ballot that year or whether it opens for all partisan elective state public officials, including those not on the ballot that year. The Commission decided that the window does open for all partisan elective state officials and found that no violations occurred for those lobbyists that were identified to have given to candidates not on the ballot during the contribution window. This was a new interpretation for the Commission, as previous audits had found violations when lobbyists had contributed to partisan elective state officials not on the ballot that year. Attorney Wittenwyler summarizes the change in interpretation well by stating in his request, "As previously applied, the contribution window limited both when lobbyists may contribute personal funds and to whom they may contribute." The contribution window opens for partisan elective state officials regardless of whether they are actually participating in an election and on the ballot that year or in a particular special election.

It is important to note, that the contribution window may not necessarily open "on the first day authorized by law for the circulation of nomination papers" for partisan state elective officials who are legislators, as the Legislature may still be in session at this time. For example, generally the first day to circulate nomination papers to be on the ballot for the general election is April 15, and typically the Legislature will still be in session at this time. Therefore, the contribution window will not be open for partisan elective state officials who are legislators until the conclusion of the final floorperiod.

IV. Conclusion

In his request Attorney Wittenwyler presented four examples of lobbyist contributions and requested clarification that all these would be permissible following the change in interpretation at the meeting on December 19, 2019. The scenarios provided in the request are the following contributions:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

These contributions would all be permissible under the new interpretation of the statutes, as contributions are not restricted dependent upon a partisan elective state official being a candidate on the ballot in that year. Again, in the scenarios described above partisan elective state officials who are legislators, will potentially have a different start date than other officials, as they cannot contribute until the Legislature concludes their floor period and as long as they are not in special or extraordinary session.

The Commission may direct staff to issue an opinion based on the analysis conducted at the meeting on December 19, 2019, and in this memorandum, or the Commission may issue an opinion based on today's discussion. If the Commission has concerns over the statutory language, the Commission may wish to issue an opinion to provide some clarification to the lobbying community and request amendments or clarification to the language from the Legislature. If the Commission does not wish to issue an opinion on this matter at this time it could refer the matter to the Attorney General or the standing legislative oversight committees.

V. Attachments

A. Request for Advice – Attorney Michael B. Wittenwyler



Wisconsin Ethics Commission

Attachment C

Campaign Finance | Lobbying | Ethics
101 East Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

June 16, 2020

Attorney Mike B. Wittenwyler
Godfrey & Kahn, S.C.
1 East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719

RE: Advisory Opinion Request – Contributions to Partisan Elective State Officials by Lobbyists

Dear Attorney Wittenwyler:

Thank you for contacting the Wisconsin Ethics Commission (“Commission”) to request an advisory opinion regarding the application of Chapter 13 of the Wisconsin Statutes to contributions by individuals licensed as a lobbyists under [WIS. STAT. § 13.63\(1\)](#) (“lobbyists”), to the committee of a partisan elective state official. You advised that you were specifically seeking confirmation of the Commission’s position that a lobbyist may contribute to the committee of any partisan elective state official during the period of time between the first day authorized by law for the circulation of nomination papers and the day of the general or the special election, subject to unique restrictions on contributions to members of the Legislature.

Specifically, you asked the Commission to confirm if the following lobbyist contributions are permissible under the Commission’s interpretation of Chapter 13:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator
Daniel A. Carlton, Jr.

4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

Analysis

Relevant Statutory Sections

Your inquiry concerns matters related to the lobbying law, the provisions of Subchapter III, Chapter 13 of the Wisconsin Statutes, as well as, campaign finance law, Chapter 11 of the Wisconsin Statutes. The relevant statute sections implicated by this request for advice are as follows:

[WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides in relevant part:

- (1) "Candidate" means an individual about whom any of the following applies:
 - (c) The individual holds a state or local office.

[WIS. STAT. § 13.625\(1\)](#) provides in relevant part:

- (1) No lobbyist may:
 - (b) Give to ... to any elective state official or candidate for an elective state office, or to the candidate committee of the official, employee, or candidate:
 3. ..., money or any other thing of pecuniary value, except that a lobbyist may deliver a contribution or make a personal contribution to a partisan elective state official or candidate for national, state or local office or to the candidate committee of the official or candidate; but a lobbyist may make a personal contribution to which sub. [\(1m\)](#) applies only as authorized in sub. [\(1m\)](#).

[WIS. STAT. § 13.625\(1m\)](#) provides in relevant part:

- (1m)
 - (a) Except as provided in par. [\(b\)](#), a lobbyist may not do any of the following:
 1. Make a personal contribution to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office.
 2. Make a personal contribution to a candidate for a partisan elective state office to be filled at the general election or a special election.
 3. Make a personal contribution to the candidate committee of a partisan elective state official or candidate for partisan state elective office.
 - (b) A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:
 1. A contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

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

[WIS. STAT. § 13.625\(1\)\(b\)](#) generally prohibits lobbyists from providing anything of value to a partisan elective state official. [WIS. STAT. § 13.625\(1m\)\(a\)](#) specifically prohibits a lobbyist from making personal contributions to partisan elective state officials or candidates for partisan elective state office. However, Chapter 13 also contains an exception to these general prohibitions, that a lobbyist may make personal contributions, to partisan elective state officials who are candidates for state office during a specific time period, which is generally referred to by the Commission and the regulated community as the “contribution window.” [WIS. STAT. § 13.625\(1m\)\(b\)](#).

The first part of the sentence in subsection [\(1m\)\(b\)](#) states: “A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate....” The purpose of this portion of the sentence identifies who is covered by the provision. This clause allows a lobbyist to make a personal contribution to the individuals enumerated in the statute. It is important to note that the statutory definition of candidate in [WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides that a current state or local office holder is a candidate. The remainder of the sentence provides: “between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election.” This portion contains the window of time during which the lobbyist may make a personal contribution.

Additionally, the final part of subsection [\(1m\)\(b\)](#), lays out a more specific time period for partisan elective state officials who are current legislators or candidates for a legislative office. For these partisan elective state officials, the contribution window does not open until the Legislature concludes its final floorperiod and is not in a special or extraordinary session. Therefore, if the Legislature is still in session on the date on which nomination papers may begin being circulated, the contribution window opens on a later date, once the Legislature concludes the final floorperiod. Furthermore, if the Legislature convenes in special or extraordinary session after the contribution window has opened for legislative candidate, the window closes until such session is adjourned.

Legislative History

In your request for advice you provide an analysis of the legislative history of the relevant statutory provisions. The statutory provisions were amended most recently in 2013 and 2015, by [2013 Wisconsin Act 153](#) (“2013 Act”) and [2015 Wisconsin Act 117](#) (“2015 Act”).

There are three relevant amendments from the 2013 Act for this matter¹:

¹ 2013 Wisconsin Act 153 provided the following:

13.625 (1) (c) (intro.) of the statutes is amended to read:

13.625 (1) (c) Except as permitted in this subsection, personally 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 to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her to the personal campaign committee may be made of

1. Clarified that lobbyists may not make *personal* contributions, except during the contribution window,
2. Changed the start date for the contribution window from June 1 to “the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election,” and
3. Added special elections to the end date for the contribution window, meaning that there would be a defined contribution window for special elections due to this amendment.

The relevant amendment in the 2015 Act for this matter is that the phrase “in the year of a candidate’s election” was struck from the language.²

As you discussed in your request for advice, the major amendment in 2013 was changing the beginning of the time period for the contribution window from a specific date, June 1, to “the first day authorized by law for the circulation of nomination papers....” In your request for advice you contend that this specific reference to nomination papers, restricts the window to open only for candidates seeking ballot access in that election. Further, you stated that if the Legislature had intended to broaden the application of the contribution window to all candidates for partisan state elective office, the 2015 Act would have replaced the reference to first date it is authorized by law to circulate nomination papers (for general election this is always April 15) with a specific date, such as how it had previously been written before the 2013 Act amendment, when June 1 was used as the date of the opening of the contribution window. A specific date would not be appropriate however, given that the language added in 2013 says “the first day authorized by law for the circulation of nomination papers as a candidate at a general election or *special* election.” While there is be a specific date assigned by statute for the start of circulating nomination papers for a general election, this is not possible with a special election, as they can be called at any time.

One amendment that was not mentioned in your request for advice is the 2015 Act’s removal of the phrase “in the year of a candidate’s election,” which in the previous version of the statute preceded the description of the time period of the contribution window “between the first day authorized by law for the circulation of nomination papers....” Prior to the 2015 Act, based on the plain language of the statute, it was clear the contribution window’s application was limited to those partisan state elective officials who were on the ballot that year, because of the phrase “in the year of the candidate’s election.” As a result of the explicit removal of this phrase by the 2015 Act, the

the official or candidate in the year of a candidate's election between June 1 the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

² 2015 Wisconsin Act 117 provided the following:

- 13.625 (1) (c) (intro.) of the statutes is renumbered 13.625 (1m) (a) (intro.) and amended to read:
- (b) A lobbyist may ~~personally~~ make a ~~campaign~~ personal contribution to a partisan elective state official or candidate for partisan elective state office or to the ~~personal campaign~~ candidate committee of the official or candidate ~~in the year of a candidate's election~~ between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

contribution window now opens not only to those candidates in the year of their election, but also to those candidates that are not on the ballot for that year's election. [WIS. STAT. § 13.625 \(1m\)\(b\)](#) does not place limits on which candidates may receive the lobbyist contributions, but rather only places a limit on the time period in which the lobbyists may contribute to partisan elective state officials and candidates for partisan elective state office.

Conclusion

It is the opinion of the Commission that a lobbyist may contribution to partisan elective state officials and candidates for partisan elective state office during the period of time in which the “contribution window” is open, regardless of whether the individual is on the ballot for that election. This means that a lobbyist can make a personal contribution to any partisan elective official, candidate for partisan elective office, or their committees, any time the window is open for a general election or a special election.

It is important to note, that the contribution window may not necessarily open “on the first day authorized by law for the circulation of nomination papers” for partisan state elective officials who are legislators, as the Legislature may still be in session at this time. For example, generally the first day to circulate nomination papers to be on the ballot for the general election is April 15, and typically the Legislature will still be in session at this time. Therefore, the contribution window will not be open for partisan elective state officials who are legislators or candidates for legislative office until the conclusion of the final floorperiod. Additionally, it is important to note that the window would not open for legislators when a special election is conducted while the Legislature is in session.

The following lobbyist contributions that you specifically identified in your request for advice are all permissible under Chapter 13³:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.

To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan

³ Please note that for scenarios 2, 3, and 4, a contribution from a lobbyist to a current legislator or candidate for legislative office may not be made unless the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

official is on the ballot. This letter constitutes a formal opinion of the Ethics Commission as authorized by [WIS. STAT. § 19.46\(2\)](#). No person acting in good faith upon this opinion is subject to criminal or civil prosecution for so acting if the material facts are as stated in the opinion request and the individual is following the advice provided above.

If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Carlton, Jr.", with a stylized flourish at the end.

Daniel A. Carlton, Jr.
Administrator
Wisconsin Ethics Commission

2020 ETH 04
LOBBYING – CONTRIBUTIONS TO PARTISAN ELECTIVE STATE OFFICIALS

You are an attorney who represents several licensed lobbyists. You have presented several scenarios of lobbyist contributions to partisan elective state officials and candidates for partisan elective state office and inquire as to whether they are permissible under the applicable statutes.

Summary:

It is the opinion of the Commission that a lobbyist may contribution to partisan elective officials and candidates for partisan elective office during the period of time in which the “contribution window” is open, regardless of whether the individual is on the ballot for that election. Therefore, all of the following lobbyist contributions to partisan elective state officials and candidates for partisan elective state office are permissible under the applicable statutes¹:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

Analysis

The crux of the questions you presented was whether a licensed lobbyist may contribute to all partisan elective state officials during the contribution window, not only those partisan elective state officials circulating nomination papers to have their names placed on the ballot in that year’s election.

You specifically inquired into the following scenarios:

¹ Please note that for scenarios 2, 3, and 4, a contribution from a lobbyist to a current legislator or candidate for legislative office may not be made unless the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.
3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.

Your inquiry concerns matters related to the lobbying law, the provisions of Subchapter III, Chapter 13 of the Wisconsin Statutes, as well as, campaign finance law, Chapter 11 of the Wisconsin Statutes.

The relevant statute sections implicated by this request for advice are as follows:

[WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides in relevant part:

- (1) "Candidate" means an individual about whom any of the following applies:
 - (c) The individual holds a state or local office.

[WIS. STAT. § 13.625\(1\)](#) provides in relevant part:

- (1) No lobbyist may:
 - (b) Give to ... to any elective state official or candidate for an elective state office, or to the candidate committee of the official, employee, or candidate:
 3. ..., money or any other thing of pecuniary value, except that a lobbyist may deliver a contribution or make a personal contribution to a partisan elective state official or candidate for national, state or local office or to the candidate committee of the official or candidate; but a lobbyist may make a personal contribution to which sub. (1m) applies only as authorized in sub. (1m).

[WIS. STAT. § 13.625\(1m\)](#) provides in relevant part:

- (1m)
 - (a) Except as provided in par. (b), a lobbyist may not do any of the following:
 1. Make a personal contribution to a partisan elective state official for the purpose of promoting the official's election to any national, state, or local office.
 2. Make a personal contribution to a candidate for a partisan elective state office to be filled at the general election or a special election.
 3. Make a personal contribution to the candidate committee of a partisan elective state official or candidate for partisan state elective office.

(b) A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

1. A contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.
2. A contribution by a lobbyist to the lobbyist's candidate committee for partisan elective state office may be made at any time.

[WIS. STAT. § 13.625\(1\)\(b\)](#) generally prohibits lobbyists from providing anything of value to a partisan elective state official. [WIS. STAT. § 13.625\(1m\)\(a\)](#) specifically prohibits a lobbyist from making personal contributions to partisan elective state officials or candidates for partisan elective state office. However, Chapter 13 also contains an exception to these general prohibitions, that a lobbyist may make personal contributions, to partisan elective state officials who are candidates for state office during a specific time period, which is generally referred to by the Commission and the regulated community as the “contribution window.” [WIS. STAT. § 13.625\(1m\)\(b\)](#).

The first part of the sentence in subsection [\(1m\)\(b\)](#) states: “A lobbyist may make a personal contribution to a partisan elective state official or candidate for partisan elective state office or to the candidate committee of the official or candidate....” The purpose of this portion of the sentence identifies who is covered by the provision. This clause allows a lobbyist to make a personal contribution to the individuals enumerated in the statute. It is important to note that the statutory definition of candidate in [WIS. STAT. § 11.0101 \(1\)\(c\)](#) provides that a current state or local office holder is a candidate. The remainder of the sentence provides: “between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election.” This portion contains the window of time during which the lobbyist may make a personal contribution.

Additionally, the final part of subsection [\(1m\)\(b\)](#), lays out a more specific time period for partisan elective state officials who are current legislators or candidates for a legislative office. For these partisan elective state officials, the contribution window does not open until the Legislature concludes its final floorperiod and is not in a special or extraordinary session. Therefore, if the Legislature is still in session on the date on which nomination papers may begin being circulated, the contribution window opens on a later date, once the Legislature concludes the final floorperiod. Furthermore, if the Legislature convenes in special or extraordinary session after the contribution window has opened for legislative candidate, the window closes until such session is adjourned.

Legislative History

In your request for advice you provide an analysis of the legislative history of the relevant statutory provisions. The statutory provisions were amended most recently in 2013 and 2015, by [2013 Wisconsin Act 153](#) (“2013 Act”) and [2015 Wisconsin Act 117](#) (“2015 Act”).

There are three relevant amendments from the 2013 Act for this matter²:

1. Clarified that lobbyists may not make *personal* contributions, except during the contribution window,
2. Changed the start date for the contribution window from June 1 to “the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election,” and
3. Added special elections to the end date for the contribution window, meaning that there would be a defined contribution window for special elections due to this amendment.

The relevant amendment in the 2015 Act for this matter is that the phrase “in the year of a candidate’s election” was struck from the language.³

As you discussed in your request for advice, the major amendment in 2013 was changing the beginning of the time period for the contribution window from a specific date, June 1, to “the first day authorized by law for the circulation of nomination papers....” In your request for advice you contend that this specific reference to nomination papers, restricts the window to open only for candidates seeking ballot access in that election. Further, you stated that if the Legislature had intended to broaden the application of the contribution window to all candidates for partisan state elective office, the 2015 Act would have replaced the reference to first date it is authorized by law to circulate nomination papers (for general election this is always April 15) with a specific date, such as how it had previously been written before the 2013 Act amendment, when June 1 was used as the date of the opening of the contribution window. A specific date would not be appropriate however, given that the language added in 2013 says “the first day authorized by law for the circulation of nomination papers as a candidate at a general election or *special* election.” While there is be a specific date assigned by statute for the start of circulating nomination papers for a general election, this is not possible with a special election, as they can be called at any time.

² 2013 Wisconsin Act 153 provided the following:

13.625 (1) (c) (intro.) of the statutes is amended to read:

13.625 (1) (c) Except as permitted in this subsection, personally 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 to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her to the personal campaign committee may be made of the official or candidate in the year of a candidate's election between June 1 the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

³ 2015 Wisconsin Act 117 provided the following:

13.625 (1) (c) (intro.) of the statutes is renumbered 13.625 (1m) (a) (intro.) and amended to read:

(b) A lobbyist may ~~personally~~ make a ~~campaign~~ personal contribution to a partisan elective state official or candidate for partisan elective state office or to the ~~personal campaign~~ candidate committee of the official or candidate ~~in the year of a candidate's election~~ between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

One amendment that was not mentioned in your request for advice is the 2015 Act's removal of the phrase "in the year of a candidate's election," which in the previous version of the statute preceded the description of the time period of the contribution window "between the first day authorized by law for the circulation of nomination papers...." Prior to the 2015 Act, based on the plain language of the statute, it was clear the contribution window's application was limited to those partisan state elective officials who were on the ballot that year, because of the phrase "in the year of the candidate's election." As a result of the explicit removal of this phrase by the 2015 Act, the contribution window now opens not only to those candidates in the year of their election, but also to those candidates that are not on the ballot for that year's election. [WIS. STAT. § 13.625 \(1m\)\(b\)](#) does not place limits on which candidates may receive the lobbyist contributions, but rather only places a limit on the time period in which the lobbyists may contribute to partisan elective state officials and candidates for partisan elective state office.

Conclusion

It is the opinion of the Commission that a lobbyist may contribution to partisan elective state officials and candidates for partisan elective state office during the period of time in which the "contribution window" is open, regardless of whether the individual is on the ballot for that election. This means that a lobbyist can make a personal contribution to any partisan elective official, candidate for partisan elective office, or their committees, any time the window is open for a general election or a special election.

It is important to note, that the contribution window may not necessarily open "on the first day authorized by law for the circulation of nomination papers" for partisan state elective officials who are legislators, as the Legislature may still be in session at this time. For example, generally the first day to circulate nomination papers to be on the ballot for the general election is April 15, and typically the Legislature will still be in session at this time. Therefore, the contribution window will not be open for partisan elective state officials who are legislators or candidates for legislative office until the conclusion of the final floorperiod. Additionally, it is important to note that the window would not open for legislators when a special election is conducted while the Legislature is in session.

The following lobbyist contributions that you specifically identified in your request for advice are all permissible under Chapter 13⁴:

1. To the lieutenant governor, secretary of state, state treasurer, or attorney general or to the candidate committee of a candidate for one of these offices during the contribution window that opens prior to a general election, regardless of whether he or she is on the ballot.
2. To any partisan state elective official or to the candidate committee of any candidate for partisan elective state office during the contribution window that opens when a special election is called, regardless of whether the partisan elective state official or candidate is on the ballot.

⁴ Please note that for scenarios 2, 3, and 4, a contribution from a lobbyist to a current legislator or candidate for legislative office may not be made unless the legislature has concluded its final floorperiod, and is not in special or extraordinary session.

3. To the federal campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the federal election or partisan official is on the ballot.
4. To the local campaign committee of a partisan elective state official during the contribution window that opens for a general or special election, regardless of whether the local election or the partisan official is on the ballot.



Wisconsin Ethics Commission

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June 16, 2020

Addressed to
 TBD

RE: Request for Clarification on Lobbyist Contribution Prohibitions and Exceptions Contained in WIS. STAT. § 13.625

Dear TBD:

I write on behalf of the Wisconsin Ethics Commission to request confirmation of the Commission's interpretation of certain provisions in Chapter 13 of the Wisconsin Statutes to the respective committees you each chair regarding contributions by licensed lobbyists to partisan state officials and candidates for partisan elective state office.

Our agency received the enclosed request for advice and after considerable research by Commission staff and careful deliberation by the Commission at meetings on February 25, 2020, and June 16, 2020, the Commission has decided to exercise the option granted by WIS. STAT. § 19.46(2)(c)1. to issue the enclosed formal advisory opinion. At this time, the Commission also decided to request confirmation of the Commission's interpretation as to certain provisions related to lobbyist campaign contributions.

Chapter 13 of the Wisconsin Statutes generally prohibits lobbyists from providing anything of value to a partisan elective state official. However, Chapter 13 also contains an exception to this general prohibition, that a lobbyist may make personal contributions to partisan elective state officials who are candidates for state office during a specific time period, commonly referred to as the "contribution window". WIS. STAT. § 13.625(1m)(b). The contribution window opens on the first day that nomination papers may be circulated and closes the day of the general or special election. For partisan elective state officials who are legislators or candidates for legislative office the contribution window does not open until the legislature concludes its final floorperiod and is not in a special or extraordinary session. Therefore, if the Legislature is still in session at the time when nomination papers may be circulated, the contribution window opens for legislative candidates only once the session concludes. If the Legislature convenes in special or extraordinary session after the contribution window has opened, the window closes until such session is adjourned.

In its review of the relevant statutory sections, the Commission examined the legislative history of WIS. STAT. § 13.625, specifically the amendments made by 2013 Wisconsin Act 153 ("2013 Act") and 2015 Wisconsin Act 117 ("2015 Act"). There were three relevant amendments from the 2013 Act¹:

¹ 2013 Wisconsin Act 153 provided the following:

1. Clarified that lobbyists may not make *personal* contributions, except during the contribution window,
2. Changed the start date for the contribution window from June 1 to “the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election,” and
3. Added special elections to the end date for the contribution window, meaning that there would be a defined contribution window for special elections due to this amendment.

Additionally, the 2015 Act contained one relevant amendment, that is the phrase “in the year of a candidate’s election” was struck from the language.²

The major amendment in 2013 was changing the time period of the contribution window from starting a specific date, June 1, to “the first day authorized by law for the circulation of nomination papers...” This changed the statutory provision from referring to a single specific date, likely one which had been based off of application to only general elections, to instead refer to a set time period, that could be appropriately applied whether the election was a general or special election.

The major change that came from the 2015 Act was the removal of the phrase “in the year of the candidate’s election,” which had in the previous version of the statute preceded the description of the time period of the contribution window “between the first day authorized by law for the circulation of nomination papers...” The prior statute’s plain language would have limited permissible lobbyist contributions, to those partisan state elective officials who were on the ballot that year. It is the Commission’s opinion that as a result of the removal of this phrase, the contribution window now opens not only to those candidates in the year of their election, but also to those candidates that are not on the ballot for that year’s election. Therefore, the Commission believes that WIS. STAT. § 13.625 (1m)(b) does not place limits on which candidates may receive the lobbyist contributions, but rather

13.625 (1) (c) (intro.) of the statutes is amended to read:

13.625 (1) (c) Except as permitted in this subsection, personally 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 to the official's or candidate's personal campaign committee. A lobbyist may personally make a campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her to the personal campaign committee may be made of the official or candidate in the year of a candidate's election between June 1 the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

² 2015 Wisconsin Act 117 provided the following:

13.625 (1) (c) (intro.) of the statutes is renumbered 13.625 (1m) (a) (intro.) and amended to read:

(b) A lobbyist may ~~personally~~ make a ~~campaign~~ personal contribution to a partisan elective state official or candidate for partisan elective state office or to the ~~personal campaign~~ candidate committee of the official or candidate ~~in the year of a candidate's election~~ between the first day authorized by law for the circulation of nomination papers as a candidate at a general election or special election and the day of the general election or special election, except that:

only places a limit on the time period in which the lobbyists may contribute to partisan elective state officials and candidates for partisan elective state office.

As the Commission is merely interpreting the statutes and examining the available legislative history resources, it is seeking confirmation of their interpretation from the Legislature, as you are the drafters and the source of the legislation. The Commission wishes to ensure that it is correctly applying the law in exercising its duties to enforce Chapter 13 of the Wisconsin Statutes and hopes to provide additional clarity on this topic for the regulated community. The Commission respectfully requests that the Legislature either confirm that the Commission's interpretation of the law is accurate or inform the Commission of how the legislation, as drafted, should be correctly interpreted and applied.

We hope that the Legislature would consider providing clarity to the Commission on this matter. The Commission and its staff look forward to the opportunity to work with you and other Legislators on this matter. Please let us know if there is anything that we can do to assist in addressing this issue.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. Carlton, Jr.", written in a cursive style.

Daniel A. Carlton, Jr.
Administrator
Wisconsin Ethics Commission



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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DATE: For the Commission Meeting on June 16, 2020
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: 2020 RA 10; Application of Open to the General Public Exception

FOR COMMISSION ACTION

For this agenda item, the Commission may:

1. Answer the questions presented and direct:
 - a. The Administrator prepare and issue an informal opinion based on today's discussion;
 - b. An informal opinion be prepared for consideration and issuance by the Commission at its August meeting; or
 - c. A formal opinion be prepared for consideration and issuance at its August meeting.
2. Request more specific factual representations prior to providing guidance; or
3. Decline to provide the requested advice.

I. Introduction

Attorney Wittenwyler sent a request for advice positing two hypotheticals. The first involved whether a covered person, who is a member of an organization, could accept a thing of value that is being offered to all members of the organization at a membership event. The second question regarded an event that was not a membership event. This attendance criteria for the event would consist of members of groups that are interested in public policy issues, other entities or people interested in the public policy issues, and covered persons. In the case of the first question, staff had sufficient precedent to provide guidance related to the membership event. The Administrator issued 2020 RA 06 as an informal opinion to address that question. However, in reviewing the second question, there was not sufficient precedent to address this via informal opinion issued by the Administrator. Below is a discussion of the applicable law, the question presented, and questions for the Commission to consider.

II. Discussion

Wisconsin law generally prohibits a lobbyist¹ from giving anything of pecuniary value to an agency

¹ WIS. STAT. § [13.62\(10\)](#), [\(10g\)](#), [\(11\)](#), [\(12\)](#).

official², legislative employee³, elective state official⁴, candidate for state elective office⁵, or the candidate committee⁶ of any such official, employee, or candidate (“covered person”). WIS. STAT. § [13.625\(1\)\(b\)](#) and [\(1m\)](#). The Commission and its predecessor agencies have held that this restriction remains applicable even when the covered person offers payment to the lobbyist in exchange for the item or service. [WIS. STAT. § 13.625\(3\)](#), [1997 Wis Eth Bd 12](#), ¶ 5 (reaffirmed by the Government Accountability Board on January 15, 2009; reaffirmed by the Ethics Commission on June 18, 2019), [Guideline ETH-1211](#), [80 Op. Att’y Gen. 205 \(1992\)](#).

[WIS. STAT. § 13.625\(2\)](#), then extends those prohibitions to a lobbying principal, but also provides an exception unique to lobbying principals:

(2) No principal may engage in the practices prohibited under subs. [\(1\) \(b\)](#) and [\(1m\)](#). 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.

The Commission adopted the following test used by its predecessor agencies to determine when a thing of pecuniary value is available to the general public:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are:
 - a. Established and readily identifiable; and,
 - b. Drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee, or elective state official; and,
3. There is no offer or notice of availability directed to an agency official, legislative employee, or elective state official with the effect of conferring an advantage not also given other who meet the criteria.

[WIS. STAT. § 13.625\(2\)](#), [1997 Wis Eth Bd 12](#), ¶ 8 (reaffirmed by the Government Accountability Board on January 15, 2009; reaffirmed by the Ethics Commission on June 18, 2019), [Guideline ETH-1211](#), [80 Op. Att’y Gen. 205, 212 \(1992\)](#).

Under this test, a lobbying principal may limit its offer to those who meet certain eligibility criteria as long as the criteria are: (a) established and readily identifiable, and (b) drawn without the purpose or effect of giving a preference to, or conferring an advantage upon, an enumerated official or employee. Accordingly, a lobbying principal may limit its offer to certain persons or types of persons that include covered persons when the above test is met (e.g., persons of a certain age or living in a certain geographic area). See [1996 Wis Eth Bd 6, 3 n.3](#).

The inquiry is drafted such that elements 1., 2.a., and 3 of the test are clearly met. As was the case in 2020 RA 06, what is being contemplated is whether food, drink, and potentially other items of de minimis value (i.e., pens, buttons, etc.) is being made available to the general public and, therefore, may be accepted by

² [WIS. STAT. § 13.62\(1\)-\(3\)](#).

³ [WIS. STAT. § 13.62\(8m\)](#).

⁴ [WIS. STAT. § 13.62\(6\)](#).

⁵ WIS. STAT. §§ [5.02\(23\)](#), [11.0101\(1\)](#), [13.62\(5g\)](#), [13.62\(6\)](#).

⁶ WIS. STAT. §§ [11.0101\(2\)](#), [13.62\(5j\)](#).

covered persons. In this case, the event is not a membership event and the covered persons do not otherwise meet the eligibility criteria. (The request provides that all attendees will be offered and have equal access to these items. Therefore, the phrase attendance criteria is used instead of the phrase “eligibility criteria” that is used in the test.) Rather, it is an event hosted by an organization with a particular interest. Others with the same interest would also be welcomed. Additionally, the attendance criteria could include a class of covered persons (such as all legislators) or it could target individual covered persons.

The overarching question presented is whether including covered persons in the attendance criteria means that the attendance criteria were drawn with the purpose or effect of giving a preference to or conferring an advantage on the covered person(s). Staff discussed this request in more detail via telephone with Attorney Wittenwyler. During that conversation, two approaches were posited: The first approach was to create the attendance criteria that included all legislators. The second approach was creating the attendance criteria that included specific, named officials.⁷

Before delving into the question of whether these hypotheticals have the effect of giving a preference or conferring an advantage upon a covered person, there is another question the Commission might consider addressing: Is it possible to have attendance criteria that do not include covered persons and still invite a covered person(s) to be a part of the event without contravening the test? For example, The Wisconsin Birdwatchers Association is a principal that is active statewide. It is going to have a statewide meeting that includes all organizations that are interested in birds. The criteria say nothing about a covered person attending. However, the organization invites a Senator that does not meet the attendance criteria. Has the organization constructively included the Senator as part of the attendance criteria simply by inviting him/her? Or is it just an invite to attend the event?

The following definitions will be helpful in the Commission’s consideration of this request.

According to Merriam-Webster’s Online Dictionary, the most pertinent definitions of “preference” include:

- 1a. The act of preferring; the state of being preferred;
- 1b. The power or opportunity of choosing;
2. One that is preferred;
3. The act, fact, or principle of giving advantages to some over others; or
4. Priority in the right to demand and receive satisfaction of an obligation.

According to Merriam-Webster’s Online Dictionary, the most pertinent definitions of “advantage” include:

1. Superiority of position or condition;
2. A factor or circumstance of benefit to its possessor; or
3. Benefit or gain, especially a benefit resulting from some course of action.

In the first proposed scenario, it is posited that the attendance criteria include all members of the Legislature and that each member would receive the same notice in the same manner as all others that

⁷ For this to be possible, the notice of the event would have to be provided to all attendees using the same method of communication and at the same time.

meet the attendance criteria. The Commission could logically answer that this is permissible or that it is prohibited. If the Commission concluded that it was permissible, it would be based on the rationale that, by including all legislators, the criteria were not drawn to give a preference or advantage to “an agency official, legislative employee, or elective state official” because no preference was given to a specific, identified covered person. Alternatively, the Commission could conclude that, since the class “legislators” is a known, identified group of individuals, there is a de facto preference or advantage by specifically including all legislators.

Regarding the second proposed scenario, it appears logical that the Commission would conclude that including a specifically identified covered person in the attendance criteria would result in a preference for that individual’s attendance. However, if the Commission determines that the organization can create attendance criteria that does not include any covered person, but may still invite a covered without changing the attendance criteria, it could be possible to invite a specific, covered official without running afoul of the test.

Staff is looking for guidance on how to answer these questions. If the Commission wants to provide guidance concerning these matters, it can answer the questions above and staff can prepare either an informal opinion or a formal opinion. If the Commission directs an informal opinion to be issued, it can be done by the Administrator. This would provide an immediate, effective response while allowing the Commission to review it at its meeting in August and make any revisions that might be necessary. The Commission could also decide to issue an informal and request a draft of the informal be presented at the Commission’s meeting in August. Finally, the Commission could also direct staff to prepare a formal opinion for consideration and adoption at its August meeting. A formal opinion would be published on the Commission’s website.

Enclosures: Request

February 6, 2020

VIA HAND DELIVERYWisconsin Ethics Commission
101 East Wilson, Suite 127
Madison, WI 53703**Application of Lobbying Law to Events
that are Accessible to the General Public**

Dear Chairperson Strachota:

Pursuant to Wis. Stat. § 19.46(2), we are seeking the Wisconsin Ethics Commission's (the "Commission's") opinion regarding the application of Wis. Stat. § 13.625(2) to an organization that is a registered lobbying principal under Wis. Stat. § 13.64. Specifically we are seeking confirmation that a lobbying principal makes transportation, lodging, food, meals, beverages and other things of pecuniary value available to the general public under Wis. Stat. § 13.625(2) when the item or service is made available to all members of the organization or to all attendees at an event sponsored by the organization as long as the event notice and criteria for attendance meet the test established by the Commission.

BACKGROUND

Under the Wisconsin lobbying law, lobbyists and lobbying principals are generally prohibited from giving lodging, transportation, meals, beverages, money or any other things of pecuniary value to the following individuals:

- Agency officials;¹
- Legislative employees;
- Elective state officials;

¹ An agency official is a member, officer, employee or consultant of any agency who as part of such person's official responsibilities participates in any administrative action in other than a solely clerical, secretarial or ministerial capacity. Administrative action means the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under Chapter 227 of the Wisconsin Statutes. An agency includes, any board, commission, department, office, society, institution of higher education, council, or committee in the state government, or any public authority created by statute. It does not include a council or committee of the legislature. Wis. Stat. § 13.62(1)-(3). It is common for professional or trade associations ("associations") to recommend individuals for service on boards, councils and commissions. In fact, in several instances statutes require service by a representative of a specific association or an individual recommended by a specific association. *See e.g.*, Wis. Stat §§ 15.107(6); 15.135(4); 15.137(1); 15.185(5); 15.197(12); 15.227(15); 15.313(2); 15.377(8); 15.406(6); 15.407(13); 15.497(2); 15.675(1); 15.915(1).

- Candidates for elective state office; and,
- Candidate committees of an official, employee or candidate.²

Under the Commission's interpretation of state law, these covered officials are likewise generally prohibited from soliciting or accepting anything of pecuniary value from a lobbyist or lobbying principal, even in exchange for payment.³ The lobbying law contains specific exceptions to these prohibitions,⁴ including an exemption when a lobbying principal provides transportation, lodging, food, meals, beverage or any other things of pecuniary value to a covered official which is also made available to the general public.⁵

According to the Commission, a thing of pecuniary value is made available to the general public under the following circumstances:

- It is available to anyone who wants it and who meets the criteria for eligibility;
- The criteria are:
 - Established and readily identifiable; and,
 - Drawn without the purpose or effect of giving preference to or conferring an advantage on an agency official, legislative employee or elective state officials; and,
- There is no offer or notice of the event, item or service directed to an official that would convey an advantage to the official.⁶

ANALYSIS

The Commission advises that "something is available to the general public if it is accessible to the general public."⁷ However, general public does not include "everyone in the world or even all residents of Wisconsin."⁸ The Commission's interpretation is consistent with the dictionary definition of "public" which means, among other things, "a group of people who have common interests or characteristics, specifically the group at which a particular activity or enterprise

² Wis. Stat. § 13.625(1), (2).

³ Wis. Stat. § 13.625(3); ETH 1211.

⁴ See Wis. Stat. § 13.625(4)-(10).

⁵ Wis. Stat. § 13.625(2).

⁶ ETH-1211 (rev. Mar. 2019) citing Wis. Stat. §§ 13.625(2), 19.56(3)(b); 80 Op. Att'y Gen. 205, 212 (1992); 1991 Wis. Eth Bd. 3, 1991 Wis. Eth Bd. 9, 1997 Wis. Eth Bd. 12.

⁷ 1996 Wis. Eth Bd. 6, note 3 citing *American Mut. Liability Ins. Co. v. Fisher*, 58 Wis. 2d 299, 303, 206 N.W.2d 152 (1973).

⁸ 1996 Wis. Eth Bd. 6 note 3.

aim.”⁹ Accordingly, the general public may be limited to certain persons or types of persons, including covered officials when the above test is met.

Member-Only Events

A covered official who is a member of an organization that is a lobbying principal may accept things of pecuniary value from the organization at a member-only event as long as all of the following is true:

- The event is open to all members of the organization and any thing of pecuniary value provided at the event is available to every attendee who wants it.
- The organization’s membership criteria are established in bylaws, policies or other organization documents and readily identifiable. Criteria by its very meaning means that an organization may appropriately limit membership based on certain traits or standards.¹⁰ For example, membership may be limited to a person with a specific professional license or a person who is a member of an affiliated organization, who is located in a specific geographical area or who is of a certain age. Covered officials are excluded from accepting a thing of pecuniary value from an organization of which he or she is a member only when membership criteria is drawn with the purpose or effect of giving preference to or conferring an advantage on an agency official, legislative employee or elective state officials.¹¹
- The covered official receives the same offer or notice of the event made to all members of the organization and the notices provides all members the same access to the event and things of value provided at it.¹²

Other Events

A covered official may accept things of value at an event sponsored by a lobbying principal if all of the following is true:

- The event is open to anyone who meets the attendance criteria and any thing of pecuniary value provided is available to every attendee who wants it.
- The criteria for attendance are established and readily identifiable on any notice publicizing the event. As with membership criteria, attendance criteria may be

⁹ Merriam-Webster.com, 2020.

¹⁰ See Merriam-Webster.com (2020); Criterion means a standard on which a judgment or decision may be based or a characterizing mark or trait.

¹¹ The Commission may wish to clarify whether the membership criteria of an association of government agencies or of government officials gives a preference or confers an advantage on a covered official under this test.

¹² See 1996 Wis. Eth Bd. 6.

appropriately limited to specific persons or types of persons. As long as the attendance criteria is not limited to solely covered officials, the organization gives no preference and confers no advantage to those covered officials. For example, the attendance criteria for a reception intended to facilitate discussions between covered officials and constituents on public policy issues may include organization members and employees, members and employees of other organizations that share a common interest, specific elected officials and employees of specific branches of government or state agencies.

- The covered official receives notice of the event made to all persons who meet the attendance criteria and that notice provides all attendees the same access to the event and things of value provided at it. For example, no portion of the event may be open only to covered officials and no thing of value available at the event may be given only to covered officials.

CONCLUSION

In sum and based on the forgoing, we are seeking the Commission's confirmation that a lobbying principal has made a thing of pecuniary value available to the general public under the following circumstances.

- A covered official who is a member of an organization that is lobbying principal may accept things of pecuniary value at a member-only event sponsored by the principal when the following is true:
 - The event is open to all organization members and any thing of pecuniary value provided is available to every attendee who wants it;
 - The organization's membership criteria are clearly established and readily identifiable; and,
 - The covered official receives the same offer or notice of the event made to all members of the organization that provides for the same access to the event and things of value provided at it.
- A covered official may accept things of pecuniary value at an event sponsored by a lobbying principal when the following is true:
 - The event is open to anyone who meets the attendance criteria and any thing of pecuniary value provided is available to every attendee who wants it;
 - The criteria for attendance is not limited solely to covered officials and such criteria are established and readily identifiable on any notice publicizing the event; and,

- The covered official receives notice of the event made to all persons who meet the attendance criteria and such notice does not provide the covered official greater access to the event and or to things of value provided at it.

Please let us know if you have questions or need any additional information. We look forward to receiving the Commission's reply.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler
Jodi Jensen

cc: Dan Carlton

21841084.1

From: [Haseleu, Jessica](#)
To: [Carlton, Daniel - ETHICS](#)
Cc: [Jensen, Jodi](#)
Subject: WEC - Advisory Opinion Request
Date: Thursday, February 6, 2020 10:34:16 AM
Attachments: [image001.png](#)
[WEC AO Lobbying Law Gen Public Events.pdf](#)

Hi Dan: Please see the attached. The original will be filed with your offices.

Thank you -

Jessica Haseleu | *Legal Executive Assistant*

608.284.2263 direct

JHaseleu@gklaw.com

GODFREY & KAHN S.C.

One East Main Street, Suite 500 | Madison, Wisconsin 53703-3300

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Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the Commission Meeting on June 16, 2020
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rules Update and Hearing

FOR COMMISSION ACTION

1. For ETH 1 – Comprehensive Review of ETH 1 for Consistency with Statute, does the Commission approve of the revised draft rule and associated documents and direct staff to submit them to the Governor’s Office for final approval prior to submission to the Legislature?
2. For ETH 21 – Practice and Procedure, does the Commission approve the notice of preliminary public comment period and hearing to be held at the Commission’s meeting on August 18, 2020?
3. For ETH 26 – Settlement Offer Schedule, does the Commission approve of the draft rule and associated documents and direct staff to submit them to the Legislative Council Rules Clearinghouse?

I. Chapter ETH 1 – Act 117 Amendments/Attribution (Update Only - No Action Required)

As the Commission may recall, this rule had been the subject of a hearing by the Assembly Committee on Campaigns and Elections on January 30, 2020. The Assembly Committee ultimately did not request changes to the rule, and it was referred to the Joint Committee for Review of Administrative Rules (JCRAR) on February 26, 2020. JCRAR did not take any action on the rule and its review period ended on March 30, 2020. Commission staff subsequently submitted the rule for final review and publication by the Legislative Reference Bureau (LRB) on April 23, 2020. The rule was published in the May 25th edition of the Administrative Register and became effective on June 1, 2020.

II. Chapter ETH 1 – Comprehensive Review of ETH 1 for Consistency with Statute

This rule is the subject of a public hearing today. If, after consideration of any public comments, the Commission approves the rule, the next step will be to submit the draft rule to the Governor’s Office for final approval before submitting the draft rule to the Legislature.

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

This rulemaking began after the Commission received feedback from the Legislative Council Rules Clearinghouse during an earlier rulemaking process that the Commission should conduct a further comprehensive review of ETH 1 to ensure that the terms used in the rule are consistent with the terms used in Chapter 11. Specifically, this broader rule is to conform other provisions of ETH 1 that were not within the scope of the earlier rulemaking to the provisions of Chapter 11 as revised by 2015 Wisconsin Act 117.

The Commission initially directed staff to prepare the scope statement for this rule on June 18, 2019. At the Commission's meeting on August 20, 2019, the Commission initially approved the scope statement and directed staff to submit it to the Department of Administration (DOA) and the Governor's Office for review and approval. Staff submitted the scope statement to DOA on August 23, 2019. The scope statement was approved by DOA and submitted to the Governor's Office on August 30, 2019. The Governor's Office approved the scope statement on October 3, 2019. The scope statement was published in the Administrative Register as SS 098-19 on October 7, 2019. Senator Nass, a co-chair of JCRAR, subsequently directed the Commission to hold a preliminary public hearing on the scope statement as authorized by [WIS. STAT. § 227.136\(1\)](#). The preliminary public hearing notice was approved by the Commission at its special meeting on November 13, 2019. At that meeting, the Commission also directed a preliminary public hearing on the scope statement be held on December 3, 2019. The preliminary public hearing notice was published in the Administrative Register on November 18, 2019. The preliminary public hearing on the scope statement was held on December 3, 2019. No public comments were received on the scope statement. After the hearing concluded, the Commission directed staff to prepare the rule and associated documents for submission to the Legislative Council Rules Clearinghouse. The Commission also directed a public hearing to be held on the rule at its meeting on June 16, 2020.

Commission staff received the Legislative Council Rules Clearinghouse report on this proposed rule on March 18, 2020 (see attached). The report recommends a technical revision to the rulemaking order's caption, suggests clarifying in the plain language analysis that the Commission is extending ETH 1.60 & 1.70 to additional committee types, and recommends addition of a description of the factual data and analytical methodologies used in preparing the rule. Commission staff has incorporated those suggested changes into the revised rulemaking order attached to this memo.

Staff believes the expansion of ETH 1.60 & 1.70 in Sections 6-10 of the proposed rule are consistent with the objective of the rulemaking and were appropriately identified as potentially subject to revision in the scope statement. [WIS. ADMIN. CODE ETH 1.60](#) addresses how consulting services are reported and [WIS. ADMIN. CODE ETH 1.70](#) addresses how travel reimbursements are reported. The addition of legislative campaign committees and political parties to these sections simply serve to make reporting consistent across all committee types who may be engaged in this activity. Inclusion of these additional committee types also avoids any question that the omission of a committee type means that committee type should report that activity differently.

The purpose of the hearing today is to receive public comment on the proposed rule. As of the drafting of this memo, five public comments have been received and are attached to this memo. The first appears to take issue with the removal of the requirement of ETH 1.20(3) for a committee to obtain, when applicable, the name and address of a contributor's principal place of employment. As the Commission may know, this requirement was removed from state law in the repeal and re-creation of Chapter 11 by 2015 Wisconsin Act 117. The proposed change to ETH 1.20(3) makes this provision mirror the various requirements of Chapter 11 to report only the occupation instead of both occupation and principal place of employment. *Compare* [WIS. STAT. § 11.06\(1\)\(b\) \(2013\)](#) with [WIS. STAT. § 11.0204\(1\)\(a\)3](#). The second comment proposes the Commission establish a requirement for a contributor to a conduit to submit proof of their occupation and proposes raising the threshold for disclosure of occupation from \$200 to \$500. However, the Commission has no ability to impose such a requirement or raise the threshold for reporting of occupation information as that is set by [WIS. STAT. § 11.0704\(1\)\(b\)2](#). The other comments appear to be unrelated to the proposed rule. If further public comments are received after the preparation of meeting materials, they will be included in the supplementary materials for this meeting.

If any person in attendance today is interested in providing further comments on this rule, they are invited to provide those comments during the hearing and provide a written copy of their comments to staff for inclusion in the record.

See Attachment A for the Legislative Council Clearinghouse report, proposed draft rule, associated documents, and the public comments received to date.

III. Chapter ETH 21 – Practice and Procedure

At its meeting on December 3, 2019, the Commission directed staff to begin the rulemaking process concerning the procedure by which the Commission receives and considers complaints and requests for advice. The Commission also directed staff to prepare a scope statement for consideration at its March (now February) meeting. At that meeting, the Commission initially approved of the scope statement and directed staff to submit it to the Governor's Office for approval. Staff submitted the scope statement to DOA and the Governor's Office on February 26, 2020. The scope statement was approved by the Governor's Office on May 7, 2020. Staff submitted the scope statement to the Legislative Reference Bureau for publication in the Administrative Register on May 13, 2020. The scope statement was published in the Administrative Register as SS 041-20 on May 18, 2020. Commission staff subsequently received a directive from Senator Nass, a co-chair of JCRAR, to hold a preliminary public comment period and hearing prior to formal approval of the scope statement. Staff has prepared a proposed notice for a preliminary public comment period and hearing to be held at the Commission's next regularly scheduled meeting on August 18, 2020. This notice requires the approval of the Commission pursuant to [WIS. STAT. § 227.136\(2\)](#).

See Attachment B for the notice to be approved.

IV. Chapter ETH 26 – Settlement Offer Schedule

At the Commission’s meeting on June 18, 2019, it directed staff to prepare a scope statement to create new settlement schedules within WIS. ADMIN. CODE ETH 26 for unauthorized lobbying and late payment of lobbying fees, as well as to clarify the definition of a “day” within the rule to mean calendar days, except for the schedule for late Statements of Lobbying Activity and Expenditures. The Commission initially approved a draft scope statement with revisions as discussed at its meeting on August 20, 2019, and directed staff to submit the revised scope statement to the Department of Administration (“DOA”) and the Governor’s Office for review and approval.

That revised scope statement was sent to DOA and the Governor’s Office for review and approval on September 26, 2019. DOA completed its review and forwarded the scope statement to the Governor’s Office on September 27, 2019. The Governor’s Office approved the scope statement on November 21, 2019, and staff submitted the scope statement for publication in the Administrative Register. On December 4, 2019, Commission staff received a letter from Senator Steve Nass, co-chair of JCRAR, directing the Commission to hold a preliminary public comment period and hearing prior to final approval of the scope statement. At its meeting on December 19, 2019, the Commission approved a notice for a preliminary public hearing to be held at its meeting in March. The Commission subsequently rescheduled the March meeting to February 25, 2020. Staff amended the hearing notice accordingly and published it in the Administrative Register on January 21, 2020. The preliminary public hearing was held at the meeting on February 25, 2020, but no members of the public appeared to comment at that meeting, and no public comments were received. After the public hearing, the Commission formally approved the statement of scope and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse.

See Attachment C for the draft rule and associated documents for submission to the Legislative Council Rules Clearinghouse.

V. Attachments

- A. ETH 1 – Revised Draft Rule and Associated Documents
- B. ETH 21 – Proposed Notice of Preliminary Public Comment Period and Hearing
- C. ETH 26 – Draft Rule and Associated Documents

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 20-010

AN ORDER to repeal ETH 1.855 (3); and to amend ETH 1.20 (3) and (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a) and (c), and (2), 1.70 (2) and (3), and 1.85 (3), relating to campaign finance.

Submitted by **ETHICS COMMISSION**

02-26-2020 RECEIVED BY LEGISLATIVE COUNCIL.

03-18-2020 REPORT SENT TO AGENCY.

MSK:KBO

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

- 1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

- 2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

- 3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

- 4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO

- 5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

- 6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

- 7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 20-010

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. The caption for the proposed rule should be revised to remove the two references to “Wis. Admin. Code”, and to remove the phrase “to reflect the changes of 2015 Wisconsin Act 117;”. [s. 1.02 (1) (Example), Manual.]

b. The agency’s plain language analysis for the proposed rule states that it amends provisions of ch. ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Wisconsin Act 117. However, the analysis does not mention that the proposed rule applies existing rule provisions to additional committee types in s. ETH 1.60, *Consulting Services*, and s. ETH 1.70, *Travel Reimbursements*.

In particular, SECTIONS 6, 7, and 8 of the proposed rule add “legislative campaign committee” to the provisions about reporting of consulting services that do not currently apply to this type of committee, even though “legislative campaign committee” was a defined term that did exist under the prior version of ch. 11, Stats. Similarly, SECTIONS 9 and 10 add “political party” to provisions regarding how travel reimbursements are to be reported as contributions, even though the terms “political party” and “political party committee” existed under the prior version of ch. 11, Stats.

Accordingly, in these SECTIONS, the proposed rule is not merely modifying references to terms repealed or replaced when the campaign finance chapter was rewritten by 2015 Wisconsin

Act 117. The plain language analysis should reflect that the rule is also expanding certain provisions to apply to additional committee types.

c. In the agency's analysis for the proposed rule, the description of the factual data and analytical methodologies used in preparing the rule should be revised to provide an overview of the agency's process in developing the proposed rule, and the entry of "N/A" under that heading should be removed. For example, the entry could state if a review and comparison was made among the current text of the rule and the statutory directives on the issue. Any other aspects of the analytical process used in developing the proposed rule should also be briefly identified.

WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), and 1.85 (3); related to campaign finance.

RULE SUMMARY

A. **Statutes interpreted:** Chapter 11, Stats.

B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate rules to administer Chapter 11 pursuant to s. 11.1304 (17), Stats.

11.1304 Duties of the ethics commission. The commission shall:
(17) Promulgate rules to administer this chapter.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.
(2) Rule-making authority is expressly conferred on an agency as follows:
(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Explanation of agency authority: The Ethics Commission is required to promulgate rules to administer Chapter 11, Stats.

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 as required by 2015 Wisconsin Act 117. In that review, the Board noted several provisions that were inconsistent with the new law, but it did not address other statutory and administrative references within ETH 1 that needed to be updated to harmonize the language

with the newly created Chapter 11 or current administrative procedures before it was dissolved. This proposed rule would update provisions that currently contain references to the prior version of Chapter 11. The Ethics Commission previously sought to modify other inconsistent provisions in CR 19-035, which is currently pending review in the Legislature.

In review of Clearinghouse Rule 19-035, the Legislative Council Rules Clearinghouse report recommended the Ethics Commission should review the entire chapter to ensure consistency between the rule and Chapter 11 as re-created by 2015 Wisconsin Act 117. As such a review would require a broader statement of scope than initially proposed, rather than amending the scope of CR 19-035, the Ethics Commission proposes a new rule to amend those provisions of Wis. Admin. Code ETH 1 that contain outdated language (e.g., “personal campaign committee” instead of “candidate committee”) or are otherwise not consistent with Chapter 11 as re-created by 2015 Wisconsin Act 117 (e.g., removing references to collecting the place of employment of a contributor) that were not previously identified as needing further revision. The Wisconsin Ethics Commission has tentatively identified the following provisions to be re-examined: Wis. Admin. Code ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), 1.85 (3), and 1.855 (3).

- C. **Related statute(s) or rule(s):** CR 19-035.
- D. **Plain language analysis:** The rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117. The rule will also extend ETH 1.60 and 1.70 to additional committee types.
- E. **Summary of, and comparison with, existing or proposed federal regulations:** N/A.
- F. **Comparison with similar rules in adjacent states:** N/A.
- G. **Summary of factual data and analytical methodologies:** Commission staff reviewed and compared the current text of the rule with the new statutory framework established by 2015 Wisconsin Act 117.
- H. **Analysis and supporting documentation used to determine effect on small businesses:** N/A
- I. **Effect on small business:** N/A
- J. **Agency contact person:**

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951
- K. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 15, 2020. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

See attached.

TEXT OF RULE

SECTION 1. ETH 1.20 (3) is amended to read:

ETH 1.20 (3) When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor's name and address and, where applicable, the contributor's occupation ~~and the name and address of his or her principal place of employment;~~ the nature of the contribution, its actual value, and the date of the contribution.

SECTION 2. ETH 1.20 (4) is amended to read:

ETH 1.20 (4) When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant's name and address; the nature of the contribution and its actual value; and the date of the contribution.

SECTION 3. ETH 1.25 is amended to read:

ETH 1.25 A loan when made by any person, ~~or committee or group~~, except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business, shall be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. [11.1101](#), [11.1103](#), [11.1104](#), and [11.1105](#), Stats.

SECTION 4. ETH 1.39 (1) (b) is amended to read:

ETH 1.39 (1) (b) "State campaign committee" means the ~~personal campaign candidate~~ committee of a candidate for state or local office.

SECTION 5. ETH 1.56 (2) is amended to read:

ETH 1.56 (2) When a registrant sells an item which it has purchased for resale to raise funds ~~for political purposes~~, the entire amount of the proceeds of the sale shall be reported in the registrant's campaign finance report as a contribution from the purchaser.

SECTION 6. ETH 1.60 (1) (a) is amended to read:

ETH 1.60 (1) (a) Expenditures for consulting services made by a ~~candidate's~~ candidate committee, political action committee, legislative campaign committee, or political party ~~committee~~ on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided

in par. (c). This rule shall not apply to independent expenditures made under ss. [11.0505](#), [11.0605](#), and [11.1001](#), Stats.

SECTION 7. ETH 1.60 (1) (c) is amended to read:

ETH 1.60 (1) (c) Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political ~~party parties or legislative campaign~~ committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

SECTION 8. ETH 1.60 (2) is amended to read:

ETH 1.60 (2) If a candidate, ~~candidate's candidate~~ committee, political action committee, ~~or~~ political party, or legislative campaign committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in ss. [11.1101](#), [11.1103](#), [11.1104](#), and [11.1105](#), Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

SECTION 9. ETH 1.70 (2) is amended to read:

ETH 1.70 (2) If the candidate or elected official is reimbursed by another individual, ~~personal campaign~~ candidate committee, political action committee, political party, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

SECTION 10. ETH 1.70 (3) is amended to read:

ETH 1.70 (3) If the candidate or elected official is an officer or employee of a political party or legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the political party or legislative campaign committee.

SECTION 11. ETH 1.85 is amended to read:

ETH 1.85 Conduit registration and reporting requirements. A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor, ~~and~~ the date and amount of each contribution, and the occupation, if any, of each contributor whose cumulative contributions to the transferee for the calendar year are in excess of \$200.

SECTION 12. ETH 1.855 (3) is repealed.

SECTION 13. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

3. Subject

Repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), and 1.85 (3), to reflect the changes of 2015 Wisconsin Act 117; related to campaign finance.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would remove outdated portions of the administrative code and adopt consistent language between Wis. Admin. Code Chapter ETH 1 and Chapter 11, Stats. The alternative to implementing the rule would be to continue leave the code and statute mismatched and requiring the regulated community and the Commission to attempt to translate between the two sets of terminology. This could continue to promote confusion among the regulated community and may lead to non-compliance with Chapter 11, Stats.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117.

15. Compare With Approaches Being Used by Federal Government

N/A.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A.

17. Contact Name
David P. Buerger

18. Contact Phone Number
(608) 267-0951

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On February 25, 2020, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117.

Statement of Scope

The scope statement for this rule, SS 098-19, was approved by the Governor on October 3, 2019, published in Register No. 766A1, on October 7, 2019, was subject to a preliminary public hearing and public comment period as directed by a co-chair of JCRAR, and was approved by the Ethics Commission on December 3, 2019, subsequent to the preliminary public hearing held that same day.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 16, 2020.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Ethics Commission

Agency Contact Person

David P. Buerger
P.O. Box 7125
Madison, WI 53707-7125
David.Buerger@wisconsin.gov
(608) 267-0951

Amended Notice of Hearing

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), and 1.85 (3), to reflect the changes of 2015 Wisconsin Act 117; related to campaign finance; at the time and place shown below.

Hearing Information

Date: June 16, 2020

Time: 9:00 A.M.

Location: 101 East Wilson Street, Wisconsin Room, Madison, WI 53703

Please note, if the building is not open to the public on June 16th, this hearing will be held by teleconference at:

Phone Number: (608) 316-9000

Conference ID Number: 53081594#

Appearances at the Hearing and Submittal of Written Comments

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to eth.rulecomments@wi.gov. Written comments must be received no later than June 15, 2020 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Buerger, David - ETHICS

From: Software-Notification@legis.wisconsin.gov
Sent: Monday, April 27, 2020 7:09 PM
To: ETH RuleComments
Cc: dhelmenstine@wisc.edu
Subject: Public comment on CR 20-010

Name: Dylan Helmenstine
Address: 4881 Page Ln, Black Earth WI 53515
Email: dhelmenstine@wisc.edu

Organization:

Comments: I have conflicting views for the proposed amendment to ETH 1.20 (3). I believe that this is a good change for campaign finance in regards in-kind donations from active working class citizens. Forcing working Wisconsinites report their place of primary employment may lead to retaliation from superiors at their place of employment. Working Wisconsinites should not have to risk their employment to be politically active. However, a large enough in-kind donation should come with the in place requirement. It is important for voters to know where funding is coming from for candidates. If an individual makes a significant enough donation, the name of their primary employer should be attached, to make it easier to see when large money interests are supporting candidates. Large in-kinds are more likely to be made by managers, or superiors in workplaces, and so they do not face the same level of employment threat when being politically active. So, they transparency concerns take precedence in their case.

From: Software-Notification@legis.wisconsin.gov
To: [ETH RuleComments](#)
Cc: wleadholm@wisc.edu
Subject: Public comment on CR 20-010
Date: Tuesday, May 05, 2020 2:31:15 PM

Name: William Leadholm
Address: 507 W Wilson St, apt 607, Madison Wisconsin 53703
Email: wleadholm@wisc.edu

Organization:

Comments: Provision ETH 1.85 "Conduit registration and reporting requirements" of CR 20-010 is not efficient as it could be. In order to prevent campaigns from being funded from illegitimate sources, some sort of proof of occupation should be required of the contributor. Additionally, the monetary cap of \$200 should be raised to at least \$500. A person contributing \$200 is much less likely to be illegitimate than a person contributing a larger amount. Having the monetary cap so low will cause an excess of logistical work that is unnecessary.

From: Software-Notification@legis.wisconsin.gov
To: [ETH RuleComments](#)
Cc: aedesk@viceland.com
Subject: Public comment on CR 20-010
Date: Tuesday, May 05, 2020 8:19:55 AM

Name: Ryan Buroker
Address: 1320 Bad aXe ct, viroqua wi 54665
Email: aedesk@viceland.com

Organization: human rights

Comments: How can the system of revocation be ethical when it allows police and probation officers to target individuals? All that's needed are charges to send people back on revocation, even if charges get dropped. There is NO accountability for them. I'm sentenced to three years on charges that should get dropped and already did one on charges brought on by false reports. How many times can a person restart their life before giving up? I was doing great!

Buerger, David - ETHICS

From: Software-Notification@legis.wisconsin.gov
Sent: Thursday, May 07, 2020 4:42 AM
To: ETH RuleComments
Cc: aedesk@menshealth.com
Subject: Public comment on CR 20-010

Name: Ryan Buroker
Address: 1320 Bad Axe Ct, Viroqua WI 54665
Email: aedesk@menshealth.com

Organization: can't bury me

Comments: Probation and police work together to target individuals much the way abusive adults target troubled children then taunt them saying, "prove it, they'll never believe you over me". this is vernon county where everyone knows everyone else. police and p.o.s are at each others parties. the good ol boy system... rights are being violated. please investigate me

Buerger, David - ETHICS

From: Software-Notification@legis.wisconsin.gov
Sent: Wednesday, May 27, 2020 1:22 AM
To: ETH RuleComments
Cc: aedesk@wxow.com
Subject: Public comment on CR 20-010

Name: Helpless Citizen
Address: Vernon County, Viroqua WI 54665
Email: aedesk@wxow.com

Organization: bullying?

Comments: Are probation holds meant for charging booking fees at jails? Where is the line on ethics when money is made by locking people up without regulation? Isn't that human trafficking technically?

Notice of Hearing

The Wisconsin Ethics Commission announces that it will hold a preliminary public hearing on statement of scope SS 041-20 for WIS. ADMIN. CODE ETH 21 relating to procedures for requests for advice and complaints. The type of the proposed rule is permanent. In accordance with s. 227.136, Stats., the Commission is seeking public comment and feedback on this scope statement at the time and place shown below.

Hearing Information

Date: August 18, 2020

Time: 9:00 A.M.

Location: 101 East Wilson Street, Wisconsin Room, Madison, WI 53703

Appearances at the Hearing and Submittal of Written Comments

The statement of scope may be reviewed, and comments made at:
http://docs.legis.wisconsin.gov/code/scope_statements/comment.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to eth.rulecomments@wi.gov. Written comments must be received no later than August 17, 2020 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

SS# 114-19, Wisconsin Administrative Register No. 767B, 11/25/2019

WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes a rule to renumber WIS. ADMIN. CODE ETH 26.03 (3); to amend ETH 26.02 (1) (a), (b) (intro.), (c) (intro.), (d) (intro.), and (e), (2) (a) to (i), (3) (a) to (d), (6) (a) and (b), (7) (a) and (b), (8) (a) and (b), 26.03 (1) (b) (intro.), (c) (intro.), (d) (intro.), and (e) (intro.), and 26.04 (1) (a) and (b), to specify either business or calendar days; and to create ETH 26.03 (3a) and 26.03 (4) to establish additional settlement schedules for unauthorized lobbying and late payment of lobbying fees, relating to settlement of potential campaign finance, lobbying, and ethics violations.

RULE SUMMARY

A. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.

B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.

10. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

11.1304 Duties of the ethics commission. The commission shall:
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the

purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Explanation of agency authority: The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.

C. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.

D. **Plain language analysis:** The rule would set forth settlement schedules in the following two additional categories: (1) unauthorized lobbying, and (2) late payment of lobbying fees. The amendments to the rule would clarify the word “days” in prior settlement schedules throughout the rule as either calendar or business days.

E. **Summary of, and comparison with, existing or proposed federal regulations:**

The Lobbying Disclosure Act requires the employer of lobbyists (in-house or lobbying firms) to register the client for which the registrant has an employee that meets the federal definition of a lobbyist, provided they have exceeded the de minimis requirements for registration. The registration is filed with the Secretary of the Senate and the Clerk of the House of Representatives within forty-five days after a lobbyist makes a first contact, or is retained to do so, whichever is earlier. 2 U.S.C. § 1603(a)(1). There are no fees associated with registration. Whoever knowingly fails to (1) correct a defective filing within 60 days after notice of defect by Secretary of the Senate or Clerk of the House; or (2) to comply with any other provision of the Lobbying Disclosure Act, may be subject to a civil fine of not more than \$200,000. Whoever knowingly and corruptly fails to comply with the Act may be imprisoned for not more than five years or fined, or both. 2 U.S.C. § 1606.

F. **Comparison with similar rules in adjacent states:**

Illinois

Both lobbyists and entities that employ lobbyists must register with the Secretary of State prior to engaging in any lobbying activity, or within two working days of an agreement to conduct any lobbying activity. 25 ILL. COMP. STAT. §§ 170/3 (a). There is a \$300 registration fee due annually. 25 ILL. COMP. STAT. §§ 170/5 (f). Any person who violates the Lobbyist Registration Act shall be fined not more than \$10,000 for each violation, with every day that a report or registration is late counting as a separate violation. 25 ILL. COMP. STAT. §§ 170/10 (a). Additionally, any person convicted of violating the Lobbyist Registration Act is prohibited from lobbying for three years from the date of conviction. 25 ILL. COMP. STAT. §§ 170/10 (b).

Iowa

Iowa only requires registration of lobbyists that will be lobbying the executive branch. All executive branch lobbyists, regardless of compensation, must register with the chief clerk of the house of representatives or the secretary of the senate prior to any lobbying activity. IOWA ADMIN. CODE. r. 351—8.7(1). There are no required registration fees. Failure to register timely may result in up at a \$500 civil penalty. IOWA ADMIN. CODE. r. 351—9.4(7).

Michigan

Lobbyists must register with the secretary of state's office no more than fifteen days after becoming a lobbyist. MICH. COMP. LAWS § 4.417(1). Persons that meet the definition of a lobbyist agent must register within three calendar days of becoming a lobbyist agent. MICH. COMP. LAWS § 4.417(2). There are no fees for registering as a lobbyist or lobbyist agent in Michigan. A lobbyist or lobbyist agent that fails to register timely shall pay a late registration fee of \$10 for each day the person is not registered and remains in violation, not to exceed \$300. A person that fails to register within thirty days is guilty of a misdemeanor, and shall be fined not more than \$1,000. MICH. COMP. LAWS § 4.417(3).

Minnesota

There are no registration fees for registering as a lobbyist in Minnesota. Lobbyists must register with the Minnesota Campaign Finance and Public Disclosure Board within five days of meeting the definition of a lobbyist, or being engaged by a new individual, association, political subdivision, or public higher education system. MINN. STAT. § 10A.03, subd. 1. Lobbyists accrue a late fee of \$25 per day the registration is late (\$1,000 maximum). The Board must send a certified mail notice within ten business days after the registration was due. A lobbyist that fails to file a registration within seven days of the certified mail notice being sent is subject to a civil penalty of up to \$1,000. MINN. STAT. § 10A.03, subd. 5.

- G. Summary of factual data and analytical methodologies:** The Commission and its staff examined the history of instances of unauthorized lobbying and late payment of lobbying fees to establish reasonable settlement amounts sufficient to deter violations while still allowing for escalation in the case of repeat offenders or more significant delays, all while staying within the limits established by law.
- H. Analysis and supporting documentation used to determine effect on small businesses:**
N/A
- I. Effect on small business:** N/A
- J. Agency contact person:**

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951

K. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by August 17, 2020. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

See attached.

TEXT OF RULE

SECTION 1. ETH 26.02 (1) (a) is amended to read:

- (a) If the commission receives a continuing or September report within 30 calendar days after the due date for that report, the commission may issue a written warning to the registrant.

SECTION 2. ETH 26.02 (1) (b) (intro.) is amended to read:

- (b) If the commission receives a continuing or September report within 31 to 60 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 3. ETH 26.02 (1) (c) (intro.) is amended to read:

- (c) If the commission receives a continuing or September report within 61 to 90 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 4. ETH 26.02 (1) (d) (intro.) is amended to read:

- (d) If the commission receives a continuing or September report within 91 to 120 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 5. ETH 26.02 (1) (e) is amended to read:

- (e) If the commission receives a continuing or September report more than 120 calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

SECTION 6. ETH 26.02 (2) (a) to (i) are amended to read:

- (a) If the commission receives a preprimary, preelection, or post-election report one calendar day after the due date for that report, the commission may extend a settlement offer of \$100.
- (b) If the commission receives a preprimary, preelection, or post-election report 2 calendar days after the due date for that report, the commission may extend a settlement offer of \$150.
- (c) If the commission receives a preprimary, preelection, or post-election report 3 calendar days after the due date for that report, the commission may extend a settlement offer of \$200.
- (d) If the commission receives a preprimary, preelection, or post-election report 4 calendar days after the due date for that report, the commission may extend a settlement offer of \$250.
- (e) If the commission receives a preprimary, preelection, or post-election report 5 calendar days after the due date for that report, the commission may extend a settlement offer of \$300.
- (f) If the commission receives a preprimary, preelection, or post-election report 6 calendar days after the due date for that report, the commission may extend a settlement offer of \$350.

- (g) If the commission receives a preprimary, preelection, or post-election report 7 calendar days after the due date for that report, the commission may extend a settlement offer of \$400.
- (h) If the commission receives a preprimary, preelection, or post-election report 8 calendar days after the due date for that report, the commission may extend a settlement offer of \$450.
- (i) If the commission receives a preprimary, preelection, or post-election report 9 or more calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

SECTION 7. ETH 26.02 (3) (a) to (d) are amended to read:

- (a) If the commission receives a filing fee within one to 15 calendar days after the due date, the commission may issue a written warning to the registrant.
- (b) If the commission receives a filing fee within 16 to 45 calendar days after the due date, the commission may extend a settlement offer of \$300.
- (c) If the commission receives a filing fee within 46 to 90 calendar days after the due date, the commission may extend a settlement offer of \$500.
- (d) If the commission receives a filing fee more than 90 calendar days after the due date, the commission may extend a settlement offer of \$800.

SECTION 8. ETH 26.02 (6) (a) and (b) are amended to read:

- (a) If contributor information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If contributor information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of contributions with incomplete contributor information.

SECTION 9. ETH 26.02 (7) (a) and (b) are amended to read:

- (a) If disbursement information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If disbursement information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of disbursements with incomplete disbursement information.

SECTION 10. ETH 26.02 (8) (a) and (b) are amended to read:

- (a) Within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) More than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the cash balance discrepancy.

SECTION 11. ETH 26.03 (1) (b) (intro.) is amended to read:

(b) If the commission receives a statement of lobbying activity and expenditures within 3 to 5 business days after the due date for that report:

SECTION 12. ETH 26.03 (1) (c) (intro.) is amended to read:

(c) If the commission receives a statement of lobbying activity and expenditures within 6 to 15 business days after the due date for that report:

SECTION 13. ETH 26.03 (1) (d) (intro.) is amended to read:

(d) If the commission receives a statement of lobbying activity and expenditures within 16 to 29 business days after the due date for that report:

SECTION 14. ETH 26.03 (1) (e) (intro.) is amended to read:

(e) If the commission receives a statement of lobbying activity and expenditures 30 business days or more after the due date for that report:

SECTION 15. ETH 26.03 (3) is renumbered ETH 26.03 (5).

SECTION 16. ETH 26.03 (3a) is created to read:

(3a) UNAUTHORIZED LOBBYING. If a lobbyist makes a lobbying communication on behalf of a lobbying principal prior to authorization as required by s. 13.65, Stats.:

(a) If the lobbyist has committed no prior offenses, the commission may extend a settlement offer of \$100 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(b) If the lobbyist has committed a prior offense, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(c) If the principal has committed no prior offenses, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

(d) If the principal has committed a prior offense, the commission may extend a settlement offer of \$400 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

SECTION 17. ETH 26.03 (4) is created to read:

(4) FAILURE TO TIMELY PAY LOBBYING FEES.

(a) *Lobbyist license fees.*

1. If the commission receives a lobbyist license fee within one to 30 calendar days after the due date, the commission may issue a written warning to the lobbyist.
2. If the commission receives a lobbyist license fee within 31 to 45 calendar days after the due date, the commission may extend a settlement offer of \$100.
3. If the commission receives a lobbyist license fee within 46 to 60 calendar days after the due date, the commission may extend a settlement offer of \$200.
4. If the commission receives a lobbyist license fee more than 60 calendar days after the due date, the commission may extend a settlement offer of \$300.

(b) *Lobbying principal registration fees or lobbying principal authorization fees.*

1. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within one to 30 calendar days after the due date, the commission may issue a written warning to the principal.
2. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 31 to 45 calendar days after the due date, the commission may extend a settlement offer of \$200.
3. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 46 to 60 calendar days after the due date, the commission may extend a settlement offer of \$400.
4. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee more than 60 calendar days after the due date, the commission may extend a settlement offer of \$600.

SECTION 18. ETH 26.04 (1) (a) and (b) are amended to read:

(a) If the commission receives a statement of economic interests within 15 calendar days after the due date for the statement of economic interests, the commission may issue a written warning to the individual.

(b) If the commission receives a statement of economic interests 16 or more calendar days after the due date for the statement of economic interests, the commission may extend a settlement offer of \$100, plus \$100 for every additional 15 calendar days after the 16th day following the due date.

SECTION 19. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 26 – Settlement Offer Schedule

3. Subject

Settlement offer schedules for violations of Chs. 11, 13, and 19.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The Commission proposes a rule to comply with the requirement of WIS. STAT. § 19.49(2)(b)10. This statute requires the Commission to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Ethics Commission seeks to add two more categories of civil offenses to this rule: (1) unauthorized lobbying, and (2) late payment of lobbying fees. The rule also clarifies the use of the word "days" throughout the current rule to specify either calendar or business days.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would provide certainty to the regulated community as to the potential amounts sought for potential violations of the laws the Commission administers. It would also permit the Commission to authorize the Commission Administrator to settle the specified alleged offenses on its behalf if the alleged offenses in aggregate do not involve payment of more than \$2,500, which could accelerate the speed with which potential violations could be resolved.

The alternative would be to not create such a rule, but instead continue to rely on the Commission's established settlement schedule. Such inaction could lead to confusion among the regulated community as to what potential violations the Commission would settle and the amounts to be paid for various offenses as these have varied over time

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

and between the predecessor agencies and the Ethics Commission. Lack of a rule would also limit the ability of the Commission to delegate settlement authority to the Commission Administrator, which could significantly delay resolution of complaints and audit findings.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would permit the Commission to increase the efficiency of resolving potential violations of the laws the Commission administers.

15. Compare With Approaches Being Used by Federal Government

The Lobbying Disclosure Act requires the employer of lobbyists (in-house or lobbying firms) to register the client for which the registrant has an employee that meets the federal definition of a lobbyist, provided they have exceeded the de minimis requirements for registration. The registration is filed with the Secretary of the Senate and the Clerk of the House of Representatives within forty-five days after a lobbyist makes a first contact, or is retained to do so, whichever is earlier. 2 U.S.C. § 1603(a)(1). There are no fees associated with registration. Whoever knowingly fails to (1) correct a defective filing within 60 days after notice of defect by Secretary of the Senate or Clerk of the House; or (2) to comply with any other provision of the Lobbying Disclosure Act, may be subject to a civil fine of not more than \$200,000. Whoever knowingly and corruptly fails to comply with the Act may be imprisoned for not more than five years or fined, or both. 2 U.S.C. § 1606.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois

Both lobbyists and entities that employ lobbyists must register with the Secretary of State prior to engaging in any lobbying activity, or within two working days of an agreement to conduct any lobbying activity. 25 ILL. COMP. STAT. §§ 170/3 (a). There is a \$300 registration fee due annually. 25 ILL. COMP. STAT. §§ 170/5 (f). Any person who violates the Lobbyist Registration Act shall be fined not more than \$10,000 for each violation, with every day that a report or registration is late counting as a separate violation. 25 ILL. COMP. STAT. §§ 170/10 (a). Additionally, any person convicted of violating the Lobbyist Registration Act is prohibited from lobbying for three years from the date of conviction. 25 ILL. COMP. STAT. §§ 170/10 (b).

Iowa

Iowa only requires registration of lobbyists that will be lobbying the executive branch. All executive branch lobbyists, regardless of compensation, must register with the chief clerk of the house of representatives or the secretary of the senate prior to any lobbying activity. IOWA ADMIN. CODE. r. 351—8.7(1). There are no required registration fees. Failure to register timely may result in up to a \$500 civil penalty. IOWA ADMIN. CODE. r. 351—9.4(7).

Michigan

Lobbyists must register with the secretary of state's office no more than fifteen days after becoming a lobbyist. MICH. COMP. LAWS § 4.417(1). Persons that meet the definition of a lobbyist agent must register within three calendar days of becoming a lobbyist agent. MICH. COMP. LAWS § 4.417(2). There are no fees for registering as a lobbyist or lobbyist agent in Michigan. A lobbyist or lobbyist agent that fails to register timely shall pay a late registration fee of \$10 for each day the person is not registered and remains in violation, not to exceed \$300. A person that fails to register within thirty days is guilty of a misdemeanor, and shall be fined not more than \$1,000. MICH. COMP. LAWS § 4.417(3).

Minnesota

There are no registration fees for registering as a lobbyist in Minnesota. Lobbyists must register with the Minnesota Campaign Finance and Public Disclosure Board within five days of meeting the definition of a lobbyist, or being

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

engaged by a new individual, association, political subdivision, or public higher education system. MINN. STAT. § 10A.03, subd. 1. Lobbyists accrue a late fee of \$25 per day the registration is late (\$1,000 maximum). The Board must send a certified mail notice within ten business days after the registration was due. A lobbyist that fails to file a registration within seven days of the certified mail notice being sent is subject to a civil penalty of up to \$1,000. MINN. STAT. § 10A.03, subd. 5.

17. Contact Name David P. Buerger	18. Contact Phone Number (608) 267-0951
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On June 16, 2020, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule would set forth settlement schedules in the following two additional categories: (1) late payment of lobbying fees and (2) unauthorized lobbying. The amendments in the proposed rule would clarify the word “days” in prior settlement schedules throughout the current rule as either calendar or business days.

Statement of Scope

The scope statement for this rule, SS 114-19, was approved by the Governor on November 21, 2019, published in Register No. 767B, on November 25, 2019. A preliminary public comment period and hearing was noticed and held as directed on February 25, 2020, and the scope statement was approved by the Ethics Commission after the preliminary public hearing on the scope statement on February 25, 2020.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 18, 2020.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Ethics Commission

Agency Contact Person

David P. Buerger
P.O. Box 7125
Madison, WI 53707-7125
David.Buerger@wisconsin.gov
(608) 267-0951

Notice of Hearing

The Wisconsin Ethics Commission proposes a rule to renumber WIS. ADMIN. CODE ETH 26.03 (3); to amend ETH 26.02 (1) (a), (b) (intro.), (c) (intro.), (d) (intro.), and (e), (2) (a) to (i), (3) (a) to (d), (6) (a) and (b), (7) (a) and (b), (8) (a) and (b), 26.03 (1) (b) (intro.), (c) (intro.), (d) (intro.), and (e) (intro.), and 26.04 (1) (a) and (b), to specify either business or calendar days; and to create ETH 26.03 (3a) and 26.03 (4) to establish additional settlement schedules for unauthorized lobbying and late payment of lobbying fees, relating to settlement of potential campaign finance, lobbying, and ethics violations.

Hearing Information

Date: August 18, 2020

Time: 9:00 A.M.

Location: 101 East Wilson Street, St. Croix Room, Madison, WI 53703

Appearances at the Hearing and Submittal of Written Comments

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to eth.rulecomments@wi.gov. Written comments must be received no later than August 17, 2020 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 East Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the Commission Meeting on June 16, 2020

TO: Members, Wisconsin Ethics Commission

FROM: Colette Greve, Ethics Specialist

SUBJECT: Review of Ethics Opinions of Previous Boards

FOR COMMISSION ACTION

For Eth. Bd. Ops. 95-07 and 03-16, the Commission may decide to:

- a. Withdraw, modify, or reaffirm opinions as recommended by staff;
- b. Withdraw, modify, or reaffirm opinions as amended by today's discussion;
or
- c. Direct staff to continue review of the opinions.

For Eth. Bd. Ops. 03-08 and 13-01, the Commission may decide to:

- a. Withdraw, modify, or reaffirm opinions as recommended by staff;
- b. Withdraw, modify, or reaffirm opinions as amended by today's discussion;
or
- c. Direct staff to continue review of the opinions.

Background

The Commission is finishing its review of formal advisory opinions of the previous boards. At the Commission meeting on February 25, 2020, staff recommended the Commission review two opinions, Eth. Bd. Ops. [95-07](#) and [03-16](#), as the advice given in these opinions may not be consistent with how the Commission would provide advice, specifically advice related to WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). Staff sought the Commission's review as there was a question as to whether these two opinions took too broad of a reading of WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#) as it relates to state and local officials soliciting on another behalf and for another's benefit. The Commission had a substantive discussion of these statute sections at the meeting on February 25, 2020, but ultimately decided to continue its review at the meeting June 16, 2020, with additional context provided by Commission staff.

In addition to these opinions, the Commission tabled the review of Eth. Bd. Ops. [03-08](#) and [13-01](#) to be completed at the June 16 meeting. Staff is seeking the Commission's guidance concerning whether the opinions are correctly applying and interpreting WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). These opinions do not appear to address the last sentence in both WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). That sentence provides that these subsections do not prohibit officials from engaging in outside employment. Additionally, the predecessor agencies in these opinions

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

appear to have conflated the analysis of the application of the common law duty of undivided loyalty and WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#).

Relevant Statutory Sections

The relevant statutory sections are as follows:

No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

[WIS. STAT. § 19.45\(3\)](#).

No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

[WIS. STAT. § 19.59\(1\)\(b\)](#).

At the Commission meeting on February 25, 2020, the Commission determined that these subsections essentially have three elements. Below is a table showing the elements of this statute:

Element A	Element B	Element C
No person may offer, directly or indirectly, to an official...	...anything of value...	If it could reasonably be expected to influence the official's vote, official actions, or judgment.
No person may give, directly or indirectly, to an official...		
No official may accept, directly or indirectly, from any person...		If it could reasonably be considered as a reward for any official action or inaction on the part of the official.
No official may solicit, directly or indirectly, from any person...		

These statutes prohibit offering, giving, accepting, and soliciting things of value under the circumstances presented in either box of Element C. It is important to note that the statute does not prohibit the official from taking a vote or using the official's position. Nor does it require abstention. Those matters would be subject to the prohibitions referenced in footnote 1 below. Rather, the way not to violate the statute is to not offer, give, solicit, or accept a thing of value where it could be reasonably expected to influence the official's actions or be reasonably

considered as a reward for past action or inaction. The final piece of these subsections is an exception that they do not prohibit an official from engaging in outside employment. WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#) specifically provide that the subsections do not prohibit an “official from engaging in outside employment.”

Additionally, the phrase “anything of value” used in WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#) is specifically defined in statute as the following:

Any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. [19.56](#), political contributions which are reported under ch. [11](#), or hospitality extended for a purpose unrelated to state business by a person other than an organization.

[WIS. STAT. § 19.42\(1\)](#).

It is important to note that WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#) differ from the other provisions in the state and local ethics codes in that these subsections do not explicitly reference benefit to other persons, as several other provisions in the state and local ethics codes do by including specific references to immediate family and organizations with which the official is associated.¹

Review of Eth. Bd. Ops. 95-07 and 03-16

The Ethics Board opined in Eth. Bd. Ops. [95-07](#) and [03-16](#),² that WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#) operate regardless of whether the contributions solicited are directed to the official’s personal benefit or another’s benefit. Staff initially was concerned that it is unclear from the statutory language in WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#), if it is meant to be applied to solicitations on behalf and to the benefit of others or just the official, as these subsections do not explicitly include references prohibiting benefits to other persons, such as immediate family or organizations with which the official is associated, as is the case in several other provisions in the state and local ethics codes. Rather, these statutes use the phrase “directly or indirectly.”

¹ WIS. STAT. §§ [19.45\(2\)](#), [19.46\(1\)](#), and [19.59\(1\)\(a\)](#) and [\(c\)](#) generally provide for the following:

No state or local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. [11](#).

No state or local public official may take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest. Or, use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² There are several other opinions that had already been reviewed that provide the same advice. They are as follows: Eth. Bd. Ops. [94-01](#) and [96-14](#).

Upon further review, staff believes that this is a correct application of WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). These subsections specifically provide that officials may not solicit *directly or indirectly* from any person. This signals that the thing a value being solicited may be either a direct or indirect benefit to the official. Furthermore, something that is only of indirect value could reasonably be expected to influence the official's judgment or be seen as a reward for an official's action.

For example, a local official, a common council member, is a member of the local rotary club. The local official is soliciting donations on behalf of the club for an annual event. As part of the member's fundraising efforts, the member solicits a donation from a local business that has a matter before the common council at its next meeting. [WIS. STAT. § 19.59\(1\)\(b\)](#) would be implicated as the official solicited a thing of value (i.e., a monetary contribution) from a person and the donation indirectly benefits the official as a member of the rotary club. The remaining question is whether it is reasonable to expect the official's judgment to be influenced. Whether the business' response to the solicitation could reasonably be seen to influence the official's judgment is a question of fact that must be answered on a case by case basis, looking at the totality of the circumstances. While the end answer to this question may not always be yes, WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#), should applied to these types of situations as it was in Eth. Bd. Ops. [95-07](#) and [03-16](#).

Staff recommends that Eth. Bd. Ops. [95-07](#) and [03-16](#) be reaffirmed, as they properly apply and interpret WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#).

Review of Eth. Bd. Ops. 03-08 and 13-01

Eth. Bd. Ops. 03-08 and 13-01 concern officials and the business or employment of the official or the official's spouse. In both opinions, the predecessor opined that the prohibitions against using position and acting when there is a conflict of interest do not apply. However, those opinions then use WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#), as well as the common law duty of undivided loyalty to opine that the official could not take action. Staff is concerned that these opinions misapply WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). These opinions raise three issues: that the mechanical operation of the statute was erroneous, that the opinions ignore the sentence concerning outside employment, and the Commission's role regarding the common law duty of undivided loyalty.

Before those three concerns are addressed, it is important to address the fact that the predecessor opined that the prohibitions against using position and acting where there was a conflict of interest was present are inapplicable. These holdings are correct. These statutes generally prohibit situations where an official uses his or her position to obtain something of value or take official action where the official would benefit, the official's family member would benefit, or an organization with which the official was associated would benefit. There was no indication that the official would personally benefit in these opinions; only the official's (or the official's spouse's) employer could benefit. However, the definition of "associated" only applies to an employer if the official is a director, officer, trustee, owns more than 10% of the outstanding equity of the employer, or is an authorized agent or representative. See [WIS. STAT. § 19.42\(2\)](#). None of those things appeared to be the case in these opinions.

Staff agrees with the general proposition that the statutes should prohibit an official from taking official action on matters that impact his or her employer. In addition to continuing to clearly, separately advise requestors about the common law duty of undivided loyalty, the Commission may also wish to make a legislative recommendation that the definition of “associated” include an employer. This would resolve the fact that the direct prohibitions on use of position and conflicts of interest do not currently include employers. However, for the following reasons, staff recommends strong reconsideration of these opinions.

First, staff believes that the statute was erroneously applied. Unlike the other provisions in the both the state and local ethics codes, WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#), do not prohibit an official from participating in official action or using the official’s position. In applying these subsections, Eth. Bd. Ops. [03-08](#) and [13-01](#), hold that, because it is reasonable to expect that official’s judgment would be affected, the official must refrain from participating in or taking action on such matters where their judgment may be affected or be seen as a reward their action.

As a general proposition, staff agrees that it is reasonable to think that a person’s employment could influence his or her official actions or judgment. However, these opinions fail to correctly apply the law because they require abstention from official action. Basically, the rationale appears to be that, by avoiding the official action, the official’s actions would not be influenced or rewarded. That rationale is especially attractive when the direct prohibitions on use of position and conflicts of interests do not apply, as was the case in these two opinions. However, it is incorrect because the two clauses in Element C in the table above describe the circumstances where a thing of value should not be offered or given to an official or solicited or accepted by an official. As noted above, nothing in the statute prohibits taking official actions or authorizes abstention as a “cure.” Under these opinions, an official could continue to accept things where it is clear that the things would reasonably be expected to influence the official’s actions or would reasonably be seen as a reward for past actions so long as they refrain from taking the actions. As the statute’s aim is to prohibit a person from offering or giving, and an official from soliciting or accepting, a thing of value under those circumstances, this result could not have been intended. Therefore, staff believes that these opinions misapply WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#).

Second, the opinions appear to ignore the sentence that states that these sections are not intended to prohibit outside employment. The Commission’s predecessor agencies opined that it is reasonable to expect that an official’s judgment will be affected when participating in or taking action on a matter in which the official’s employer has a demonstrated financial interest in the matter, as employees generally have a natural loyalty to their employer as they receive compensation and possible benefits from their employer. (As noted above, staff agrees with this as a general principle.) Based on this, the opinions ultimately held that the official could not take the official action.

While staff believes that the conclusion is erroneous because the statute does not prohibit taking official action, the exemption for outside employment is also worthy of discussion as a separate and distinct issue. It is important to note that, without the last sentence in each statute, the correct mechanical application of the statute would likely prohibit an official from being paid by the official’s employer in the circumstances presented in these opinions. The official would be accepting something of value (the employment and concomitant compensation) and it is clear that

the employment and concomitant compensation could reasonably be expected to influence the official's actions.

The question, then, is whether the statement that these subsections do not prohibit outside employment allow the official to accept compensation from his/her employer and whether an employer can give compensation to the official/employee under these statutes. These subsections specifically state that they do not prohibit outside employment. Based on this sentence, the Legislature clearly intended to allow officials to hold office and have outside employment. Further, the Legislature clearly expressed that intent in [WIS. STAT. § 19.45\(1\)](#) which, in pertinent part, states,

This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

It is generally understood that employment requires the employer to provide compensation and the employee to produce a good or provide a service. By stating that these subsections do not prohibit outside employment, the Legislature clearly intended to allow employers to pay officials as a part of the outside employment. So, giving and accepting salary and compensation for that outside employment cannot be prohibited by WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#).

It is important to note that, in both of these opinions, the employment predates the action from which the predecessor agency required recusal. Clearly, these statutes would prohibit a person from offering or giving, and an official soliciting or accepting, employment (or any other thing of value) that they did not hold before the official took office where it could reasonably be expected to influence the official's actions or judgment or is a reward for past actions as an official.³ However, they should not be read to prohibit someone from being paid for their employment just because a matter comes up that affects their employer. Rather, the correct approach is to address those matters through the lens of the prohibitions on use of position and conflicts of interest.

Finally, staff is concerned about how the advice given in Eth. Bd. Ops. [03-08](#) and [13-01](#) applies the common law duty of undivided loyalty. There are two reasons for this: First, staff is concerned about the potential of a reader to incorrectly conflate the common law duty of undivided loyalty

³ Questions concerning whether it is permissible to accept employment while in office would implicate this statute as well as other statutes within subch. III, Ch. 19, of the Wisconsin Statutes.

with WIS. STAT. §§ [19.45\(3\)](#) and [19.59\(1\)\(b\)](#). Second, staff is concerned about potential enforcement actions relying on the common law duty of undivided loyalty.

What is the common law duty of undivided loyalty? In applying the common law duty of undivided loyalty, Eth. Bd. Ops. [03-08](#) provides the following:

A public officer owes an undivided duty of loyalty to the public whom he or she serves. Public policy favors a state public official's exercise of his or her official duties and an official should avoid placing himself or herself in a position in which the official must refrain from exercising official responsibilities because a conflict of interest might arise.

It is important to note that, in discussing the common law duty of undivided loyalty, Eth. Bd. Ops. [03-08](#) and [13-01](#) cite to numerous cases that are merely persuasive from other states or case law from Wisconsin that is based on statutes not within the Commission's jurisdiction or applying statutes that have been amended or repealed.

As to the first point, staff is concerned about the potential of a reader to incorrectly conflate the common law duty of undivided loyalty with these statutes. To the extent that the opinions can be read to use the common law duty of undivided loyalty to demonstrate that the thing of value is reasonably expected to influence the official's actions or could reasonably be seen as a reward, we agree with this reading. However, these opinions do not clearly delineate between where the statutes are being applied and where the common law duty of undivided loyalty is being applied.

At its meeting on February 25, 2020, the Commission issued an informal opinion that applied both the [WIS. STAT. § 19.59\(1\)\(b\)](#) and the common law duty of undivided loyalty. The Commission however applied these separately, and the application and direction given related to the common law duty was done so in a way that recommended refraining from participation in the matter in which it was reasonable to expect that the local officials judgment may have been affected. The application the Commission used is different than that which the predecessor agencies used in Eth. Bd. Ops. [03-08](#) and [13-01](#). Staff believe this approach results in more precise and accurate guidance being given to officials.

While advising about the common law duty of undivided loyalty provides the most complete opinion to an official that is possible, it inherently raises the question of enforcement. Staff is concerned about potential enforcement actions based solely on the common law duty of undivided loyalty. While the concepts in the duty of undivided loyalty are similar to those in the state and local ethics codes, it is common law and is not directly in provisions of the state or local ethics codes. Staff believes that there is a good faith argument that the Commission could proceed with litigation to enforce this duty. However, staff could not find any precedent where a predecessor did so. As a result, it appears that the best approach is to simply keep any analysis of that doctrine clearly separate from the statutory analysis and not write in such a way as to appear compulsory.

For these reasons, staff recommends that the Commission either revise these opinions, withdraw the opinions, or withdraw the opinions and adopt the recent informal opinion discussed above as a formal.

1995 Wis Eth Bd 7
BOARDS, COMMISSIONS AND AGENCIES; INFLUENCING OFFICIAL
JUDGMENT; SOLICITATION

Neither the lobbying law nor Ethics Code applies to every state agency employee. However, state employees are likely to report to, and act at the direction of, individuals subject to one or both of these statutes. Therefore, the Ethics Board advises that an agency may solicit and accept money from others to cover administrative expenses for its project as long as (1) individuals, businesses and organizations that are solicited for, or who make, contributions are not likely to be substantially affected by statutes and rules the agency administers and enforces; and (2) neither lobbyists nor organizations that employ lobbyists are solicited unless a specific exception pertains. OEB 95-7 (December 22, 1995)

Facts

- [1] This opinion is based upon these understandings:
- a. You are an attorney with a state agency and you write on the agency's behalf.
 - b. The agency has agreed to participate with a number of Wisconsin organizations and businesses in developing a project and applying for a permit from a federal agency under a federal act in order to help implement that project.
 - c. The agency will facilitate and administer the project.
 - d. A number of the businesses participating in the project are lobbying principals in Wisconsin; other businesses include those whose activities the agency regulates.

Question

- [2] The Ethics Board understands your questions to be:

May the agency solicit and accept funds from participants in the project to help defray the agency's costs in administering the project?

Discussion

[3] The provisions of the Ethics Code and lobbying law administered by the Ethics Board that are most pertinent to your question are §§19.45(3) and 13.625, *Wisconsin Statutes*. Section 19.45(3) provides:

19.45 Standards of conduct; state public officials. (3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

Section 13.625(3) provides:

13.625 Prohibited Practices. (3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as [specifically] permitted

Application of these statutory provisions to the question you have presented is governed by long-standing interpretations of the Ethics Board.

Section 19.45(3)

[4] The Board consistently has held that §19.45(3) operates regardless of whether the contributions solicited are directed toward the official's own benefit or to the benefit of another. 4 Op. Eth. Bd. 93 (1981); 4 Op. Eth. Bd. 51 (1980). The statutory bar extends to the solicitation or acceptance of contributions to a state agency. 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9 (1986); 7 Op. Eth. Bd. 19 (1983).

[5] Section 19.45(3)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer would reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office. 4 Op. Eth. Bd. 93, *supra*; 4 Op. Eth. Bd. 51, *supra*.

[6] The Board has said that it is unreasonable to think that an official's actions or judgment would be influenced by contributions given by persons with respect to whom the official's office does not exercise any action at all or

only ministerial action or where the contributions are only of modest value. 1992 Wis. Eth. Bd. 23; 7 Op. Eth. Bd. 19 (1983); 4 Op. Eth. Bd. 51, *supra*.

[7] However, the Board has repeatedly advised that state officials not solicit contributions from individuals or entities that are likely to be materially affected by laws or rules which the official's agency is called upon to interpret or apply. 10 Op. Eth. Bd. 31, *supra*; 7 Op. Eth. Bd. 9 (1983). This would include businesses and organizations regulated by your agency. 1992 Wis. Eth. Bd. 23; 9 Op. Eth. Bd. 9 (1986). To do otherwise works against an official's impartiality and harms the agency's credibility. 10 Op. Eth. Bd. 31, *supra*.

Section 13.625(3)

[8] Section 13.625(3) applies to agency officials in a manner similar to §19.45(3). The Board has said that §13.625's prohibition can apply whether the contributions solicited are directed toward the official's own benefit or to the benefit of another.¹ 1994 Wis. Eth. Bd. 1. Under the lobbying law, once it is established that the parties involved are an agency official and a lobbyist or an organization that employs a lobbyist, no further analysis is required -- the official should not solicit money from a lobbyist or an organization that employs a lobbyist.

Advice

[9] Neither the lobbying law nor Ethics Code applies to every state agency employee. However, state employees are likely to report to, and act at the direction of, individuals subject to one or both of these statutes. Therefore, the Ethics Board advises that the agency may solicit and accept money from others to cover administrative expenses for its project as long as (1) individuals, businesses and organizations that are solicited for, or who make, contributions are not likely to be substantially affected by statutes and rules the agency administers and enforces; and (2) neither lobbyists nor organizations that employ lobbyists are solicited unless a specific exception pertains.

¹ This interpretation comports with the plain meaning of the statute and is supported by the fact that, when the legislature has wanted to permit the solicitation and acceptance of contributions from lobbyists and lobbying principals for specific state programs it has created specific exceptions to permit this. §§13.625(8) and (9). These provisions would be rendered superfluous if 13.625(3) were interpreted to permit the solicitation and acceptance of contributions for state agencies and programs, a result to be avoided in statutory interpretation. *See, e.g., State Central Credit Union v. Bigus*, 101 Wis.2d 237 (Ct. App. 1981); 80 Op. Att'y Gen. 19 (1991)

2003 Wis Eth Bd 16
LOCAL CODE – INFLUENCING OFFICIAL JUDGMENT

The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.

Facts

This opinion is based upon these understandings:

- a. You are a city attorney.
- b. The city's mayor serves on the city's plan commission.

Questions

¶1 The Ethics Board understands your question to be:

What restrictions, if any, does §19.59, *Wisconsin Statutes*, place on a city official's solicitation of contributions to the city to sponsor entertainment events for the public?

Discussion

¶2 The statutory provision most pertinent to your question is §19.59 (1) (b), *Wisconsin Statutes*. That section provides:

19.59 (1) (b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

¶3 A mayor and a member of a city's plan commission are local public officials subject to this section.¹ Using the title or prestige of office to solicit

¹ Section 19.42 (7u), *Wisconsin Statutes*, provides:

19.42 (7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a

contributions to the city is a use of office.² A contribution to the city is likely something of substantial value.³ The prohibition of §19.59 (1) (b) applies whether contributions that are solicited are directed toward the official's own benefit or to the benefit of another.⁴ The statutory bar extends to the solicitation or acceptance of contributions to a governmental unit.⁵

¶4 The question then is whether the response to a particular solicitation could reasonably be expected to influence an official's actions or judgment or reasonably be considered a reward for past action. Section 19.59 (1) (b)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer could reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office.⁶ It is unreasonable to think

political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

1997 Wis Eth Bd 6 ¶6.

Section 19.42 (7x), *Wisconsin Statutes*, provides:

19.42 (7x) "Local public official" means an individual holding a local public office.

Section 19.42 (7w), *Wisconsin Statutes*, provides:

19.42 (7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

* * *

(c) An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

² 1994 Wis Eth Bd 1 ¶5 ("The Ethics Board consistently has found that use of public position includes use of the position's title or prestige and that the restrictions apply to soliciting even for charitable organizations with which the official is associated."); 1991 Wis Eth Bd 6; 10 Op Eth Bd 47 (1988); 9 Op Eth Bd 45 (1987); 9 Op Eth Bd 21 (1986).

³ Substantial value is something more than token or inconsequential value. 1995 Wis Eth Bd 5 ¶6; 7 Op Eth Bd 2 (1983).

⁴ 1996 Wis Eth Bd 14 ¶ 6; 1995 Wis Eth Bd 7; 1994 Wis Eth Bd 1; 4 Op Eth Bd 93 (1981); 4 Op Eth Bd 51 (1980).

⁵ 1996 Wis Eth Bd 14 ¶6; 1995 Wis Eth Bd 7; 10 Op Eth Bd 31 (1988); 9 Op Eth Bd 9 (1986); 7 Op Eth Bd 19 (1983).

⁶ 1998 Wis Eth Bd 05 ¶11; 1996 Wis Eth Bd 14, *supra*, ¶7; 4 Op Eth Bd 93, *supra*; 4 Op Eth Bd 51, *supra*.

that an official's actions or judgment would be influenced by a contribution given by a person with respect to whom the official's office does not exercise any action at all, exercises only ministerial action or action generally applicable to a broad class of interests, or if the contribution is only of modest value.⁷

¶5 A city's plan commission has quasi-judicial responsibilities. It makes decisions that affect specific landowners and developers. In interpreting the Ethics Code's counterpart provision for state officials, the Board has repeatedly advised that officials not solicit contributions from individuals or entities that are likely to be materially affected by actions which the official's agency is called upon to take or that do business with the agency.⁸

Advice

¶6 The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.⁹

WR1159

⁷ 1998 Wis Eth Bd 05 ¶11; 1992 Wis Eth Bd 23; 7 Op Eth Bd 19 (1983); 4 Op Eth Bd 51, *supra*.

⁸ 1998 Wis Eth Bd 05 ¶11; 10 Op Eth Bd 31, *supra*; 9 Op Eth Bd 9 (1986), 7 Op Eth Bd 9 (1983). To do otherwise works against an official's impartiality and harms the agency's or local government's credibility. 10 Op Eth Bd. 31, *supra*.

⁹ 1994 Wis Eth Bd 01.

2003 Wis Eth Bd 08
LOCAL CODE -- DISQUALIFICATION

The Ethics Board advises that a town chair should not simultaneously participate in Town decisions concerning services provided to the Town by a company owned by the same individual that owns the company of which the town chair is an employee.

Facts

¶1 This opinion is based upon these understandings:

- a. You represent a Town.
- b. You write on behalf of the town chair.
- c. The town chair is an employee of Company A.
- d. Company A is solely owned by an individual.
- e. The individual also owns Company B, which has, for many years, contracted with the Town to provide certain services.
- f. As part of his employment by Company A, the town chair sometimes provides services to the Town for Company B.
- g. Company B also provides other services to the Town pursuant to contract.
- h. The town chair acts as the Town's overseer for these services.

Questions

¶2 The Ethics Board understands your question to be:

Under §19.59, *Wisconsin Statutes*, what, if any, restrictions does the town chair's employment by Company A place on his participation in Town decisions regarding the services provided to the Town by Company B?

Discussion

¶3 You have expressed the view that the best course of action would be for the town chair to refrain from making decisions about services provided to the Town by Company B while that company contracts with the Town to provide these services. We agree.

Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for himself or herself or for an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.¹ In addition, the statute prohibits a local public official from accepting anything of value “if it could reasonably be expected to influence the local public official’s vote, official actions or judgment.”² A member of a town board is a local public official subject to §19.59.³

Use of Office

¶4 Under the terms of the statute, an official is deemed associated with an organization if the official or a member of the official’s immediate family

“is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.”

§19.42(2), *Wisconsin Statutes*.

¶5 In the present case, the town chair is not associated, within the meaning of the statute, with either Company A or Company B. Thus, unless the town chair’s employment or compensation would be affected by the

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.59(1)(b), *Wisconsin Statutes*.

³ Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective town office.

Town's decisions regarding plowing or road or ditch repair, §19.59(1)(a) and (c) are unlikely to serve as a bar to his participation in these decisions.

Influencing Judgment

¶6 Section 19.59(1)(b) provides that an official may not accept anything of value if it could reasonably be expected to influence the official's vote, actions, or judgment.⁴ In addition, a public officer owes an undivided duty of loyalty to the public whom he or she serves.⁵

¶7 In our view, common sense tells us that it is reasonable to expect an individual's judgment to be affected when acting on a matter in which the individual's employer has a demonstrated financial interest.⁶ Although the town chair works for Company A, his employer is the sole owner of both that company and Company B. Moreover, the concern is especially real when the town chair's job duties will be affected by the Town's decisions. Thus, the town chair should avoid participating in any decision affecting the performance of work for the Town by Company B.⁷

Advice

¶8 The Ethics Board advises that the town chair should not simultaneously participate in Town decisions concerning services provided to the Town by Company B and be employed by Company A.

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⁴ Section 19.42(1), *Wisconsin Statutes*, defines "anything of value," in relevant part, as

[A]ny money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment

⁵ 14 Op. Eth. Bd. 41 (1993); 14 Op. Eth. Bd.25 (1992); 14 Op. Eth. Bd. 21 (1992); 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

⁶ 1994 Wis Eth Bd 05. *See also, e.g., Zagoreos v. Conklin*, 491 N.Y.S.2d (A.D. 1985); *Sokolinski v. Woodbridge Township Municipal Council*, 469 A.2d 96 (N.J. Super. A.D. 1983).

⁷ Our advice is consistent with the view of the courts expressed in several cases that if a local official votes on a contract in which the official's employer has an interest, the contract is void. *Heffernan v. City of Green Bay*, 266 Wis. 534 (1954) (if alderperson who voted to approve contract had been employee of individual's company when another company owned by the individual bid for the contract, the contract would have been illegal and void); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (Wis. 1921); *Ballenger v. Door County*, 131 Wis. 2d 422 (Ct. App. 1986).

2013 GAB 01
LOCAL OFFICIALS – IMPROPER USE OF OFFICE

You are a City Attorney. One member of the City Council is an employee of a local business. That member prepares documentation on the business's product for use by customers. A second member's spouse is also an employee of the business. The spouse is a trainer for the business's customers. The business is currently planning a major expansion that could involve the construction of a number of new office buildings that could accommodate thousands of new employees. The business's plans will likely require the city council to grant rezoning and conditional use permits. You ask what, if any, restrictions do the Code of Ethics for Local Public Officials place on the council members' participation in city decisions affecting the business.

Analysis

Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for himself or herself or for an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.¹ In addition, the statute prohibits a local public official from accepting anything of value "if it could reasonably be expected to influence the local public official's vote, official actions or judgment."² A member of a city council is a local public official subject to §19.59.³

Use of Office

Under the terms of the statute, an official is deemed associated with an organization if the official or a member of the official's immediate family

"is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent."

§19.42(2), *Wisconsin Statutes*.

¹ Section 19.59(1) (a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.59(1)(b), *Wisconsin Statutes*.

³ Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective town office.

In the present case, neither city council member is associated, within the meaning of the statute, with the business. Thus, unless the individual's or spouse's employment or compensation would be affected by the city's decisions regarding the business's planned expansion, §19.59(1) (a) and (c) are unlikely to serve as a bar to the city council members' participation in those decisions.

Influencing Judgment

Section 19.59(1) (b) provides that an official may not accept anything of value if it could reasonably be expected to influence the official's vote, actions, or judgment.⁴ In addition, a public officer owes an undivided duty of loyalty to the public whom he or she serves.⁵

City council member employed by the business

You have opined that “a reasonable person could conclude that the judgment of the Council members would not be influenced by continued employment with [the business].”

In the past, our predecessor agency, the Wisconsin Ethics Board repeatedly found that it is reasonable to expect an individual's judgment to be affected when acting on a matter in which the individual's employer has a demonstrated financial interest.⁶ We agree with that conclusion. Indeed, common sense tells us this.⁷ Employees generally have a natural loyalty to their employers and issues of promotion, retention, and compensation are likely always to be present. It is reasonable to conclude that such loyalty can conflict with the duty of undivided loyalty to the city, even if in any given instance both entities may benefit. And certainly, such considerations cannot be entirely cleaned from official decision-making. Our opinion is consistent with the view of the courts expressed in several cases that if a local official votes on a contract in which the official's employer has an interest, the contract is void.⁸ There may, of course, be matters that come before the city council that would have only a minor impact on the business and it may be fine for the council member to participate in those matters. But a zoning issue of significant impact, such as that here, is not minor.

City council member whose spouse is employed by the business

In our view, §19.59 does not, by its terms, apply to the city council member whose spouse is employed by the business. That is because the city council member is not receiving anything of value directly from the business so as to trigger application of the statute. Although the official is not accepting anything from the business—the official's spouse is accepting her salary from the

⁴ Section 19.42(1), *Wisconsin Statutes*, defines “anything of value,” in relevant part, as

[A]ny money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment

⁵ 14 Op. Eth. Bd. 41 (1993); 14 Op. Eth. Bd.25 (1992); 14 Op. Eth. Bd. 21 (1992); 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

⁶ 2003 Wis Eth Bd 08; 2002 Wis Eth Bd 02; 1994 Wis Eth Bd 05. *See also, e.g., Zagoreos v. Conklin*, 491 N.Y.S.2d (A.D. 1985); *Sokolinski v. Woodbridge Township Municipal Council*, 469 A.2d 96 (N.J. Super. A.D. 1983).

⁷ *See, e.g., Zagoreos v. Conklin*, 491 N.Y.S.2d (A.D. 1985); *Sokolinski v. Woodbridge Township Municipal Council*, 469 A.2d 96 (N.J. Super. A.D. 1983).

⁸ *Heffernan v. City of Green Bay*, 266 Wis. 534 (1954) (if alderperson who voted to approve contract had been employee of individual's company when another company owned by the individual bid for the contract, the contract would have been illegal and void); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (Wis. 1921); *Ballenger v. Door County*, 131 Wis. 2d 422 (Ct. App. 1986).

business. The city council member benefits from that salary. For this reason, a spouse's employment could reasonably affect the city council member's judgment. Therefore, we caution that member to be mindful of the common law duty of undivided loyalty to the city when acting in an official capacity.

Advice

The Government Accountability Board advises that the city council member employed by the local business not vote on the zoning or conditional use permit matters associated with the business's current expansion plans. The Board further advises that the city council member whose spouse is employed by the business be mindful of the common law duty of undivided loyalty to the city when acting in an official capacity.



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the Commission Meeting on June 16, 2020

TO: Members, Ethics Commission

FROM: Ethics Commission Staff

SUBJECT: Ethics Commission Staff Report

Attorney General Opinion Request

At the Commission meeting on December 3, 2019, the Commission decided not to pursue the opinion request pertaining to the constitutionality of the statutory provision authorizing the Commission to suspend a lobbyist's license under certain circumstances. Also, at that meeting, the Commission requested staff to prepare a new, more focused, opinion request concerning exempt status for campaign finance committees. Commission staff is working on preparing that request and will have a draft for the Commission's consideration at the meeting in August.

Commission Administration

COVID-19 Agency Response

The Commission staff have been following the guidance of DOA on the response to the public health emergency. Staff have been working remotely since the end of March and will continue to do so until the office building is open to the public. Staff are expecting to return in a limited capacity to continue to follow social distancing guidance while still providing customer service. The Commission staff are procuring plexiglass shields for the reception area and the cubicles closest to the entry way. Signs will be placed through the building and in the office suite with guidance on social distancing for in person customers. DOA has also provided a limited amount of face masks for staff to use while in the office.

Lobbying Request for Additional Spending Authority

The lobbying site redesign is still underway, with an expected completion date this summer. At the Commission meeting on December 3, 2019, the Commission approved a staff request to submit a request to increase spending authority in program revenue to pay for the project to DOA and the Legislature. The Commission approved increased spending authority up to the amount of \$50,000. Commission staff submitted the request to DOA on April 29, 2020. It was approved by Brian Pahnke, the DOA State Budget Director, on May 19, 2020. The request is under a passive review process by the Joint Committee on Finance. If no objections are raised, it will be approved as of June 10, 2020.

Once the public website goes live, staff and WaMS will shift their focus to administrative updates to the website. We currently expect expenses related to that work will be within existing spending authority for lobbying program revenue in fiscal year 2021.

Fiscal Year End 2020, and Fiscal Year 2021 Begins

The Commission staff started working on the fiscal year end and new fiscal year tasks in May. The Commission staff expect the year end closing to go smoothly, and without delay. The fiscal year will be closed out on or before August 11, 2020.

Some state agencies were required to lapse 5% of spending authority due to revenue lost from COVID-19, but the Ethics Commission was exempt from this requirement due to our small budget and few staff.

The new fiscal year 2021 begins on July 1, 2020. Purchase orders will be drafted and sent for IT services, copy machine lease and maintenance, and software maintenance and support.

Biennial Budget

The biennial budget process began for the biennium 2021 – 23. The Commission staff submitted the base budget review documents on May 15, 2020. Staff are awaiting guidance on budget drafting from the Governor's office. This information is typically released in May but is likely delayed due to the public health emergency. The Commission staff will present budget items for the Commission's consideration at the August meeting.

Training

Commission staff developed a training plan for Spring and Summer in preparation for the 2020 general election. Staff developed short videos that are posted to our website. Topics for the videos include registration, exemption, and termination; reporting; duties and prohibitions; and information for candidates. Additionally, staff has already conducted two webinars for candidates participating in the 2020 general election and their treasurers. Staff will be conducting a third webinar for these individuals on June 9, 2020. Staff has also scheduled a webinar for PACs and Independent Expenditure Committees on June 25, 2020. Finally, staff will conduct two webinars covering CFIS reporting on July 8th and July 9th.

Campaign Finance

Pre-Election Spring 2020

There are 26 candidates for the Spring 2020 election that are required to file campaign finance reports. Their last report was the Pre-Election Spring 2020, which covered from February 4 through March 23, 2020. That report was due March 30, 2020. All 26 candidates filed their report on time.

July Continuing 2020

The July Continuing 2020 reports are due July 15, 2020. There will be approximately 1,000 committees required to file this report. This includes all types of committees that have not claimed the exemption from filing campaign finance reports, as well as the nearly 300 candidates for the 2020 general election.

Lobbying

2019-2020 Legislative Session

As of May 27, 2020, there were 793 lobbying principals registered, 678 lobbyists licensed, and 1,719 lobbyist authorizations.

Statutes require each lobbying principal to submit a SLAE twice a year. The next deadline is July 31, 2020, which will cover activity from January 1 – June 30, 2020. After principals and lobbyists file their reports, staff will conduct audits for late SLAEs, late 15-day reports, lobbying without authorization, and late payment of lobbying fees.

Legislative Liaison Reporting

The 6-month legislative liaison report was due January 31, 2020. There are 90 state agencies that file, and as of February 10th, all but 5 had filed their reports. The last agency filed its report by March 2nd.

Code of Ethics and Financial Disclosure

Statements of Economic Interests (SEIs)

As of May 29, 2020, there were 2,427 total state public officials required to file an SEI for 2020. There are 2251 annual filers who had their SEI due by April 30, 2020. Email notices went out to those filers on January 13th, April 1st, and April 23rd. Late filers have received at least 2 email notices, 2 phone calls, and an SEI by mail send May 7th.

102 filers failed to file by the April 30th deadline. 91 of them filed between May 1st and May 15th, within the grace period defined by the settlement schedule. The 11 remaining filers will be discussed in closed session.

On April 11th, the new candidate module of the SEI website went live, allowing candidates for the fall election to file their SEIs electronically. As of June 4th, there were 411 candidate records processed for the November election, including 45 candidates that dropped out before filing nomination papers. 366 candidates filed the SEI, including incumbents who filed earlier in the year. Approximately 40 new candidates have filed via paper or .pdf file, but most have filed online. The deadline for candidates for the fall election to file SEIs was Thursday, June 4, 2020, at 4:30 p.m.

State of Wisconsin Investment Board Quarterly Reports

The 2020 first quarter reports were due by April 30, 2020. All were received by May 7th and referred to the Legislative Audit Bureau. The next quarterly reports will be due by July 31st, covering April 1st to June 30th.

