

Meeting of the Board

Monday, February 25, 2008

9:30 A.M.

Risser Justice Center, Room 150, 1st FL

120 Martin Luther King Jr. Blvd.

Madison, Wisconsin

Agenda
Open Session

		Page #
A. Call to order.	Judge Deininger	
B. Director's report of appropriate notice of meeting.		
C. Approval of minutes.	Approve minutes of previous meeting. See attached minutes	1
D. Public comment.		
<i>Break</i>		
E. Ratify use of current forfeiture schedules on interim basis	See attached materials	6
F. Initiate proposed rulemaking to adopt new proposed forfeiture schedules	See attached materials	18
G. Issue attached summaries of opinions	See attached materials	23
H. Proposed schedule for review of guidance, operating procedures opinions, and rules of former boards		28
Review Ethic Board's opinions and guidelines related to		
1) State officials' conflicts of interest		33
2) State officials' representing clients before a state agency		50
Review Elections Board's operating procedures, opinions and rules related to:		
1) Election-related petitions		55
2) Recount	See attached materials	70
I. Legal Memorandum on Wisconsin Right to Life Case	See attached materials	72
J. Director's report.		
Elections division report.		81

Ethics and accountability division report – campaign finance, state official financial disclosure, lobbying registration and reporting, contract sunshine.

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Agency administration and legal issues – general administration and orders.

See attached materials

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K. Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, Code of Ethics for Public Officials and Employees, and confer with counsel concerning pending litigation pursuant to the following statutes:

- | | |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.05 (6a) and
19.85 (1) (h) | [The Board’s deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session], |
| 19.85 (1) (g) | [The Board may confer with legal counsel concerning litigation strategy], |
| 19.851 | [The Board’s deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session], |

The Government Accountability Board has scheduled its next meeting for Wednesday, March 26, 2008 at 9:30 A.M. at the Risser Justice Center, Room 150, 1st FL, 120 Martin Luther King Jr. Blvd., Madison, WI

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

GAR Room, 413 North,
State Capitol
Madison, Wisconsin
January 28, 2008
9:30 a.m.

DRAFT

Not yet approved
by the Board

Meeting Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Selected a new GAB Chairman	2
B. Approved consolidation of rules of Elections and Ethics boards	2
C. Approved promulgation and amendment of various administrative rules	3
D. Authorized staff to apply for various elections-related grants	4
E. Designated Nathaniel E. Robinson as GAB representative to the EAC Standards Board	4
F. Approved working title for the GAB Legal Counsel as "Director and General Counsel"	5

Present: Judge Michael Brennan, Judge Thomas Cane, Judge David Deininger, Judge William Eich, Judge James Mohr, Judge Gerald Nichol

Absent: None

Staff present: Jonathan Becker, George Dunst, Barbara Hansen, Sharrie Hauge, Bart Jacque, Kevin Kennedy, Nathan Judnic, Kyle Richmond, Nat Robinson, Tommy Winkler

A. Call to order

Chairman Cane called the meeting to order at 9:40 a.m.

B. Director's report of appropriate notice of meeting

The Director reported that the meeting had been properly noticed.

C. Approval of minutes of the previous meeting

MOTION: Approve minutes of the December 10, 2007 meeting of the GAB.
Moved by Deininger, seconded by Eich. Motion carried.

D. Selection of new GAB chairman by Lot

Judge Brennan asked to comment about the selection of the chairman, and expressed his concern that all members of the Board should be available to serve as chairman.

Chairman Cane drew the name of Judge Deininger to serve as GAB chairman for 2008.

MOTION: Choose the vice chairman and secretary of the GAB by lot.
Moved by Eich, seconded by Mohr. Motion carried.

Chairman Deininger then accepted the gavel and drew the name of Judge Cane to serve as vice chairman, and Judge Nichol to serve as secretary for 2008.

E. Public Comment

1. **Paul Holzem**, former State Ethics Board member, appeared to comment on the future work of the GAB.
2. **David Anstaett**, former State Elections Board member, appeared to comment on the future work of the GAB.
3. **Alicia Boehme**, Disability Rights Wisconsin, appeared to comment about accessible polling sites.
4. **Peter C. Christianson**, lobbyist, appeared to comment on the Board's assignment from the perspective of a lobbyist.
5. **Andrea Kaminsky**, Wisconsin League of Woman Voters, appeared to comment on hopes and expectations for the new GAB.
6. **Paul Malischke** appeared to comment on item J, Administrative Rules and item K, Elections Division response to the Legislative Reference Bureau.
7. **Beverly Speer**, Wisconsin Democracy Campaign, appeared to comment on the hopes and expectations for the new GAB.
8. **Scott Tyre**, Association of Wisconsin Lobbyists, appeared to comment on the future work of the GAB with lobbyists.
9. **Mike Wittenwyler**, lobbyist, appeared to comment on the future work of the GAB.

Judge Eich commented that the public comment section of the GAB agenda, along with the written submissions, was valuable to the Board.

The chairman called a recess at 11:18 a.m. The meeting reconvened at 11:33 a.m.

Hearing no objection, the chairman moved to item J of the agenda.

J. Administrative Rules
(George Dunst)

MOTION: Authorize staff to proceed with the consolidation of the rules of the State Elections Board and the State Ethics Board into the rules of the Government Accountability Board.

Moved by Nichol, seconded by Eich. Motion carried.

MOTION: Authorize staff to add an amendment to Chapter 12 pertaining to requirements for security of ballots as item 12.04 at the appropriate location.

Moved by Eich, seconded by Cane. Motion carried.

MOTION: Authorize staff to proceed with promulgation of ElBd Chapter 12 as amended.

Moved by Eich, seconded by Nichol. Motion carried.

MOTION: Authorize staff to proceed with promulgation of ElBd Chapter 13.

Moved by Eich, seconded by Cane. Motion carried.

MOTION: Authorize staff to proceed with the amendment of ElBd Chapter 10 to apply to election-related complaints and add provisions for informing the complainant with status and disposition reports.

Moved by Cane, seconded by Nichol. Motion carried.

MOTION: Authorize staff to proceed with promulgation of emergency rule repealing inapplicable sections of ElBd Chapter 10.

Moved by Cane, seconded by Nichol. Motion carried.

MOTION: Authorize staff to proceed with promulgation of emergency rule repealing Eth 3.01 and 3.04.

Moved by Nichol, seconded by Cane. Motion carried.

The chairman requested that staff report to the Board at its next meeting regarding Mr. Malischke's recommendations about the availability of ballots.

The chairman called for a lunch break, during which presentations were made to the Board.

F. Demonstration of Web sites
(Jonathan Becker, Bart Jacque, Tommy Winkler)

- Eye on Lobbying
- Eye on Financial Relationships
- Contract Sunshine

Demonstrations were made for informational purposes; the Board took no action.

G. Overview of lobbying law and ethics code

(Jonathan Becker)

Overview was provided for informational purposes; the Board took no action.

The chairman recessed the meeting at 2:15 p.m. and reconvened it at 2:25 p.m.

H. Overview of investigation procedures

MOTION: Adopt a policy which authorizes staff to make preliminary inquiries in order to advise the Board about whether or not to initiate an investigation.

Moved by Eich, seconded by Nichol. Motion withdrawn.

J. Administrative Rules

[Item previously dealt with earlier in the meeting.]

K. Director's Report

Elections Division Report

(Nathaniel E. Robinson)

MOTION: Authorize staff to apply for additional Help America Vote Act (HAVA) Section 251 funds (\$2,111,219 in federal funding, \$111,117 required state funding match) that are made available to states to meet requirements including upgrading voting machines and voter registration databases.

Moved by Cane, seconded by Eich. Motion carried.

MOTION: Authorize staff to apply for Help America Vote Act (HAVA), Section 261 funds (\$201,727) that are made available to states to specifically ensure access for individuals with disabilities.

Moved by Mohr, seconded by Cane. Motion carried.

MOTION: Authorize staff to apply for \$2 million in EAC funds to develop a pilot program to improve the collection, analysis and distribution of election data for federal offices.

Moved by Cane, seconded by Eich. Motion carried.

MOTION: Direct staff to contact the Reedsburg municipal clerk to advise her that the candidate for Reedsburg municipal judge is ineligible to appear on the April 1 Spring Election ballot.

Moved by Eich, seconded by Brennan. Motion carried.

MOTION: Designate Nathaniel E. Robinson as Wisconsin's representative to the Federal Election Assistance Commission's Standards Board.

Moved by Mohr, seconded by Eich. Motion carried.

Ethics and Accountability Division Report

(Jonathan Becker)

Report was made for informational purposes; the Board took no action.

Agency Administration and Legal Issues
(Kevin Kennedy)

MOTION: Approve working title for the GAB Legal Counsel as “Director and General Counsel.”

Moved by Eich, seconded by Nichol. Motion carried.

L. Move to Closed Session

MOTION: Move to closed session pursuant to Sections 5.05(6a), 19.85(g), (h), and 19.851 Wis. Stats. to consider written requests for advisory opinions, the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees, and to confer with counsel concerning strategy with respect to litigation in which the Board is, or is likely to become, involved. Moved by Eich, seconded by Cane.

Roll call vote:	Brennan:	Aye	Cane:	Aye
	Deininger:	Aye	Eich:	Aye
	Mohr:	Aye	Nichol:	Aye

Motion carried, 6-0.

The Board went into closed session at 3:23 p.m..

MOTION: Adjourn the meeting.

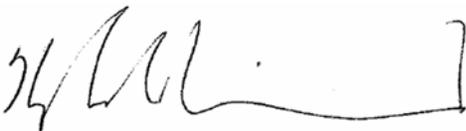
Moved by Cane, seconded by Brennan. Motion carried.

The meeting was adjourned at 4:35 p.m..

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The next meeting of the Government Accountability Board is scheduled for 9:30 a.m., Monday, February 25, 2008, in Room 150 of the Risser Justice Center, 120 Martin Luther King Jr. Blvd., Madison, Wisconsin.

GAB minutes were prepared by:



Kyle R. Richmond, Public Information Officer

February 14, 2008

Date

**SCHEDULE AND PROCEDURES FOR IMPLEMENTING SETTLEMENT OFFERS
FOR CAMPAIGN FINANCE VIOLATIONS**

This document sets out the Elections Board procedure for implementing settlement offers for campaign finance violations and sets forth a schedule of recommended settlement amounts in specific situations. The Board's authority for initiating settlement offers is set out in s.5.05(1)(c), Wis. Stats. Where intentional violations are identified by the Board, a recommendation for criminal prosecution may also be made in addition to the civil settlement offer.

1. Registration Violations, s.11.05, Wis. Stats.

a. Failure to Timely Register or Amend Registration Statement

If a registration statement is filed late or is amended after the ten-day statutory requirement, the staff treats the matter as a non-flagrant violation unless circumstances warrant enforcement action.

b. No Registration Statement or Amendment Filed when Required

If an individual, committee, or group fails to file or amend a registration statement within 15 days after receiving notification of the requirement from the Elections Board staff, the Board shall make a settlement offer in the amount of \$100 for failure to file a registration statement, \$100 for failure to amend with regard to the office sought by the candidate, and \$25 for failure to amend the registration statement with regard to other required information.

2. Late Filing of Financial Reports, s. 11.20(3), (4), (8) Wis. Stats.

a. Continuing Reports in Non-Election Years

If a registrant fails to file a continuing report within 45 days of the filing deadline after receiving two written notices from staff, the Board shall make a minimum settlement offer of \$50 for the first offense, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$50 for subsequent offenses. Non-incumbent candidates who have not received a grant from the Wisconsin Election Campaign Fund and who fail to file the continuing report will be placed on administrative suspension by the staff and will be sent a notice of accumulating penalty. Where no reports are filed, a civil action shall be commenced unless the registrant is eligible for administrative suspension.

b. Election-Related Reports

The continuing reports due immediately preceding and following a scheduled election, the pre-primary and pre-election reports, are designated election-related reports. If a registrant fails to file any of these reports within three days of the filing deadline, the Board shall make a minimum settlement offer of \$100 plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$100 for subsequent offenses.

c. Electronic Filing of Reports, s.11.21 (17), Wis. Stats

If a registrant fails to file their report electronically or files their electronic report late, the Board shall make a settlement offer based on the schedule set out below.

1. Non-filing of Electronic Report/ Non-filing of Paper Report	\$150 plus \$25 for each additional month
2. Non-filing of Electronic Report / Late filing of Paper Report	\$150 plus \$25 for each additional month
3. Non-filing of Electronic Report/ Timely filing of Paper Report	\$125
4. Late filing of Electronic Report/ Non-filing of Paper Report	\$150 plus \$25 for each additional month
5. Late filing of Electronic Report/ Late filing of Paper Report	\$150
6. Late filing of Electronic Report/ Timely filing of Paper Report	\$125
7. Timely filed Electronic Report/ Non-filing of Paper Report	\$100
8. Timely filed Electronic Report/ Late filing of Paper Report	\$100

d. Special Reports of Late Contribution, s. 11.21 (5), Wis. Stats.

The failure to file a special report of late contribution in a timely manner will result in referral to the Board with a recommendation for a settlement offer to be determined on a case-by-case basis.

e. Corporate Reports, ss. 11.20 (4), (8), 11.38 (1)(a) 2. Wis. Stats.

If a corporation fails to file a corporate campaign report (Form EB-12) disclosing administrative and solicitation expenses within 45 days of the filing deadline after receiving two written notices from staff, the Board shall make a minimum settlement offer of \$50 for the first offense, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum amount shall be increased by multiples of \$50 for subsequent offenses. A corporation whose sponsored political action committee is exempt from filing reports must still file a corporate financial report unless the corporation terminates its registration.

f. Conduit Reports

Conduits failing to timely file a conduit campaign report (EB-10) disclosing conduit activity shall be treated under the provisions of sections 1.a. and b. of this schedule.

3. Disclosure Violations, s. 11.06, Wis. Stats.

a. Failure to Report Contributor Information

When a registrant fails to disclose required contributor information such as address, occupation, name and address of principal place of employment, the Elections Board staff shall request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information, the Board will initiate enforcement action on the following matters.

- (1) If a registrant does not provide the required information for a contribution of \$250 or more, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contribution.
- (2) If a registrant fails to provide the required information for 5% or more of the total number of contributions, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contributions.

b. Failure to Report Expenditure Information

When a registrant fails to disclose required expenditure information such as address, amount or specific purpose of the expenditure, the Elections Board staff shall request the information from the registrant and make a record of the request. If a registrant does not respond to a staff request for the required information, the Board will initiate enforcement action on the following matters.

- (1) If a registrant does not provide the required information for an expenditure of \$100 or more, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented contribution.
- (2) If a registrant fails to provide the required information for 5% or more of the total number of expenditures, the Board shall extend a settlement offer of \$100 plus 10% of the incompletely documented expenditures.

c. Failure to Report a Contribution

The Board shall make a settlement offer of \$100 plus ten percent of any unreported contributions. As a condition of the settlement offer, the registrant must donate the unreported contributions to the Wisconsin Election Campaign fund, the Common School fund or to charity.

d. Failure to Report an Expenditure

The Board shall make a settlement offer of \$100 plus ten percent of any unreported expenditures.

e. Incomplete Reports – Cash Balance Discrepancies

When a registrant submits a campaign finance report that presents a beginning cash balance in the Cash Summary portion of the report, which differs, to any extent, from the ending cash balance on the prior campaign finance report, the report will be considered incomplete and inaccurate within the meaning of S. 11.06(5) Wis. Stats., and may be considered a false report under S. 11.27(1) Wis. Stats., unless registrant submits a written statement which provides an explanation for the difference between the ending cash balance shown on the prior report, and the beginning cash balance on the current report. The registrant who filed the report will be contacted and informed that the report is inaccurate and given 10 business days to file a corrected finance report.

The Board shall extend a settlement offer of \$100 plus 10% of the difference between the correct beginning cash balance and the cash balance reported on the original report. An additional \$100 per month will be assessed for each additional month that an incomplete report is not replaced by a corrected report.

4. Contribution Violations, s.11.26, Wis. Stats.

a. Exceeding 45% or 65% Cumulative Contribution Limits

Staff will inform any registrant that exceeds cumulative contribution limits by \$100 or less of the nature of the violation by letter and direct that the excess contributions be donated to the Wisconsin Election Campaign fund, the Common School fund or charity. In the event that cumulative contribution limits are exceeded by more than \$100, the Board shall make a settlement offer of a minimum of \$100 plus ten percent of the amount in excess of the contribution limits. If the excess contribution was identified by the registrant prior to staff audit, the registrant may choose to return the contribution to the contributor or charity. If the excess contribution is identified by staff audit as a condition of the settlement offer, all excess contributions must be donated to the Wisconsin Election Campaign fund, the Common School fund or charity.

b. Making or Receiving Other Illegal Contributions

Staff shall inform any registrant making or receiving illegal contributions of the nature of the violation by letter and direct the registrant to return the illegal contributions or donate them to the Wisconsin Election Campaign fund, the Common School fund or charity. In the case of illegal contributions in excess of \$100, the Board shall make a settlement offer of \$100 plus ten percent of the illegal amount. In the case of a registrant receiving a contribution from a non-registered individual or committee, there will be no penalty for the receipt of the initial contribution. If the registrant receives additional contributions from an unregistered individual or committee after receiving notice from the Board staff of the unregistered status of the contributor, the matter will be referred to the Board with the recommended settlement amount to be determined on a case-by-case basis.

c. Corporate Contributions, Earmarking or Laundering

These matters shall be referred to the Board with a recommended settlement offer to be determined on a case-by-case basis.

5. Disbursement Violations, s.11.31, Wis. Stats

a. Exceeding Spending Limits

If a registrant exceeds the disbursement limits by \$100 or less, the staff shall inform the registrant of the nature of the violation by letter and direct the registrant to return the amount in excess of the disbursement limit to the Wisconsin Election Campaign Fund. In those cases where a registrant exceeds disbursement limits by more than \$100, the matter shall be referred to the Board with a recommended settlement offer to be determined on a case-by-case basis.

b. Making Illegal Disbursements

The Elections Board staff shall refer all violations for disbursing campaign funds for non-political purposes to the Board with the settlement offer to be determined on a case-by-case basis. If a registrant improperly donates campaign funds to charity, the staff shall send a discretion letter to the registrant informing the registrant of the nature of the violation.

6. Violations Related to the Use of Grant from the Wisconsin Election Campaign Fund, s.11.50, Wis. Stats., El.Bd. 1.45 Wisconsin Administrative Code

a. Failure to Return Excess Unencumbered Funds

If a registrant fails to return required grant funds within 90 days after the day of election, the Board shall make a \$50 minimum settlement offer plus ten percent of the amount involved.

b. Improper Use of Grant Funds

If a registrant improperly uses grants in an amount of \$100 or less, the staff shall inform the registrant of the nature of the violation by letter and direct the registrant to return any funds improperly expended to the Wisconsin Election Campaign Fund. If the amount improperly used is more than \$100, the Board shall make a settlement offer of \$100 plus ten percent of the amount involved and direct the registrant to return the amount improperly expended to the Wisconsin Election Campaign Fund.

c. Late Filing of Use of Grant Reports

If a registrant fails to file the Use of Grant report within three days after the filing deadline, the Board shall make a minimum \$100 settlement offer, plus \$50 for the first month of delinquency, or part thereof, and \$25 for each additional month of delinquency, or part thereof. The minimum settlement amount shall be increased by multiples of \$100 for subsequent offenses.

7. Violations Related to Independent Expenditures, s.11.06 (7), Wis. Stats.

a. Failure to File Voluntary Oath

The Elections Board staff shall refer all violations relating to the failure to timely file a complete voluntary oath or amendment to the Elections Board with the settlement offer to be determined on a case-by-case basis.

8. Miscellaneous Violations

a. Attribution Statements, s.11.30 (2), Wis. Stats.

When a registrant informs the Elections Board staff of the failure to use a disclaimer, staff will direct the registrant to submit a letter explaining the circumstances and steps taken to correct the problem. The Elections Board staff shall refer cases involving the failure to use a disclaimer or using a misleading disclaimer to the Elections Board with the settlement offer to be determined on a case-by-case basis.

b. Unlawful Use of Reports, s.11.21 (5), Wis. Stats.

The Elections Board staff shall refer violations involving the unlawful use of reports to the Board with the settlement amount to be determined on a case-by-case basis.

c. Other Violations

The Elections Board staff shall refer flagrant or repeated violations and violations not addressed in this schedule to the Board with a settlement offer to be determined on a case-by-case basis.

9. Staff Procedures for Identifying Campaign Finance Violations

a. The Elections Board staff shall prepare a memorandum describing flagrant violations of the campaign finance law. A flagrant violation is any violation set out in this schedule. The staff may determine that other violations not listed should be treated as flagrant if the activity undermines the disclosure provisions of the campaign finance law.

b. The staff shall also present any repeated failure to comply with technical reporting requirements or repeated activity below thresholds set out in sections 1 through 7 of this schedule to the Board.

c. The Elections Board staff shall administratively resolve any technical violations of the campaign finance disclosure law by advising registrants in writing of the nature of the violation and that no further action will be taken except in the case of repeated or flagrant violations.

d. The Elections Board staff shall evaluate the explanations provided by registrants in response to staff notices of violations. The Elections Board staff shall take into consideration any mitigating circumstances it identifies or that are brought to its

attention when preparing its recommendations. These circumstances may include the lack of financial activity by a registrant.

10. Board Procedures for Implementing Settlement Offers

- a. The Elections Board staff shall notify the registrant of the violation and settlement offer providing the registrant with 30 days to pay or submit a written request to appear before the Board to present their case.
- b. The Board's campaign finance director or legal counsel shall mail the settlement offer to the registrant or the registrant's attorney offering to settle and compromise the case pursuant to s.5.05(1)(c), Wis. Stats. The registrant shall have 30 days from the date of campaign finance director's or the counsel's letter to accept the settlement offer unless the Board otherwise directs.
- c. The Elections Board may, on its own motion or at the request of its staff, reconsider any settlement offer. The Board will not reconsider any settlement offer unless the registrant informs the Board about any material mistake or new evidence which the Board decides is a basis for reconsidering its original settlement offer.
- d. If the registrant refuses to accept the Board's settlement offer or does not respond within the time period allowed, legal counsel shall commence a civil action to collect a forfeiture in an amount not less than the amount of the offer pursuant to s.11.60, Wis. Stats. After litigation begins, any settlement of the case shall include reimbursement to the state for all costs of commencing the litigation.

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AN ETHICS BOARD PROGRAM DESIGNED TO
IDENTIFY FINANCIAL INTERESTS OF STATE PUBLIC OFFICIALS
 TO FACILITATE A CLEAN AND OPEN GOVERNMENT IN WISCONSIN

Procedures-Forfeiture Schedule Annual Filing

The forfeiture schedule/notification that follows was accepted by the Board at its March 24, 2004 Meeting:

Did you forget?

Our records as of April 19, 2004 show that we have not received your Statement of Economic Interests for 2003. Your Statement is due at the Ethics Board or postmarked no later than April 30. If you believe our records are in error or if there are circumstances of which we ought to be aware, please let us know. Wisconsin Statutes require each person who held a state office in January 2004 to file a Statement by April 30, 2004. To avoid penalty, fax or mail your Statement today.

If your Statement has not been received or postmarked by April 30, you are immediately subject to the following:

<u>Date Statement postmarked or received</u>	<u>Penalty that must accompany Statement</u>
May 1-15	\$10
May 16 or later	\$50

The Ethics Board may file a complaint against you and you may be required to pay a penalty of up to \$500. In addition, *Wisconsin Statutes*, §19.43(7), directs the State Treasurer to withhold any per diem, salary, income tax refund, or other payment due you from the state.

Please contact our office if you have a question or there are circumstances of which we ought to be aware.

STATE OF WISCONSIN ETHICS BOARD

Phone: (608) 266-8123

Fax: (608) 264-9319

E-mail: ethics@ethics.state.wi.us

Web: <http://ethics.state.wi.us>

The board also approved allowing staff flexibility in accepting statements received on the first two working days after the filing deadline.

Lobbying Forfeiture Schedule

- late registration, licensure, and authorization -

Ethics Board discovers that a person is engaged in lobbying without benefit of the required registration, license, or authorization

The Ethics Board authorizes its director to settle, on the Ethics Board's behalf, violations of §§13.64, 13.65, and 13.66, Wisconsin Statutes, arising from the practice of lobbying without benefit of registration, licensure, or authorization, in accordance with the formulas that follow:

	Fee	Harm	Forfeiture	Comments
Principal's failure to register	\$375	STEALTH LOBBYING; Public, other lobbyists unaware organization is lobbying.	<u>Principal pays</u> \$1,500	Multiple of 4 times registration fee
Lobbying without authorization	\$125	STEALTH LOBBYING; Public, other lobbyists unaware who is acting for organization.	<u>Principal pays</u> \$600 If principal has been lobbying without authorizing <u>any</u> lobbyist \$250 for second and each additional unauthorized lobbyist	Multiple of 4 times authorization fee. Principal pays, rather than lobbyist because even if lobbyist shares responsibility, it is more effective punishment to make the principal pay the forfeiture. It also avoids need for fact-finding.
Lobbying without license	\$250	No harm to public not already accounted for by failure of authorization.	<u>Lobbyist pays</u> \$500 If a lobbyist has been lobbying without a license and represents only one principal	Multiple of 2 times license fee. Less harm than above. Applies only to contract lobbyists because principal should be responsible for employee lobbyists and principal is already paying \$600 (since our system precludes the authorization of an unlicensed individual).
Lobbying for second client without proper license	\$400	No harm to public not already accounted for by failure of authorization.	<u>Lobbyist pays</u> \$300	Multiple of 2 times difference between single license fee and multiple license fee. <u>Applies only when there has also been a failure to authorize.</u>

Delinquent alerts Ethics Board to delinquency and obtains the tardy registration, license, or authorization

In accordance with the formulas that follow, the director may reduce a forfeiture indicated in the foregoing table if the erring party [1] brings the omission to the Board's attention [2] obtains the tardy registration, license, or authorization and [3] the Ethics Board has not warned or penalized the delinquent for a like offense during the preceding 36 months:

Within 7 days	Warning
Within 8 through 30 days	25% of forfeiture in the table
Within 31 through 150 days	50% of forfeiture in the table
After 150 days	80% of forfeiture in the table

Delinquent obtains the tardy registration, license, or authorization but does not otherwise alert the Ethics Board to the delinquency

In accordance with the formulas that follow, the director may reduce a forfeiture indicated in the foregoing table if the erring party [1] obtains the tardy registration, license, or authorization but does not otherwise alert the Ethics Board to the delinquency and [2] the Ethics Board has not warned or penalized the delinquent for a like offense during the preceding 36 months:

Within 7 days	Warning
Within 8 through 30 days AND no lobbying communication was made on the principal's behalf between the 5th day on which a lobbying communication was made and the day that the Ethics Board granted the registration, license, or authorization	25% of forfeiture in the table
Within 8 through 30 days AND a lobbying communication was made on the principal's behalf between the 5th day on which a lobbying communication was made and the day that the Ethics Board granted the registration, license, or authorization	50% of forfeiture in the table
After 30 days	80% of forfeiture in the table

Board may address offenses with aggravating or mitigating circumstances

If in the director's judgment a violation of §13.64, 13.65, or 13.66, *Wisconsin Statutes*, has associated with it aggravating or mitigating circumstances that suggest that a departure from the foregoing forfeiture schedule is warranted, the Director may bring the matter to the Ethics Board's attention and request direction.

Statutory requirement concerning registration, licensure, and authorization

13.64 Lobbying registry. (1) Every principal who makes expenditures or incurs obligations in an aggregate amount exceeding \$500 in a calendar year for the purpose of engaging in lobbying which is not exempt under s. 13.621 shall, within 10 days after exceeding \$500, cause to be filed with the board a registration statement * * *

13.65 Lobbyist authorization. Before engaging in lobbying on behalf of a principal, a lobbyist or the principal who employs a lobbyist shall file with the board a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist.

13.66 Restrictions on practice of lobbying. . . . no person may engage in lobbying as a lobbyist unless the person has been licensed under s. 13.63 and has been authorized to act as a lobbyist for the principal whom the lobbyist represents under s. 13.65. Except as authorized under s. 13.621, no principal may authorize its lobbyist to engage in lobbying until the lobbyist is licensed and the principal is registered under s. 13.64.

Penalties

13.69 Enforcement and penalties. (1) . . . any principal violating ss. 13.61 to 13.68 or a rule of the board promulgated under those sections may be required to forfeit not more than \$5,000. In the case of a partnership, each of the partners is jointly and severally liable for any forfeiture imposed under this subsection.

(2) Any lobbyist violating ss. 13.61 to 13.68 or a rule of the board promulgated under such sections may be required to forfeit not more than \$1,000.

(7) In addition to the penalties imposed for violation of ss. 13.61 to 13.68, the license of any lobbyist who is convicted of a violation may be revoked for a period not to exceed 3 years and a lobbyist who is convicted of a criminal violation is ineligible for licensure for a period of 5 years from the date of conviction.

Late report of lobbying interests¹ Forfeiture Schedule

§13.69 Enforcement and penalties. (2m) Any principal who fails to comply with s. 13.67 (1) and who has not been found to have committed the same offense within the 3-year period preceding the date of the violation may be required to forfeit not more than \$25. Any principal who fails to comply with s. 13.67 (1) a 2nd time within a period of 3 years from the date of the first violation may be required to forfeit not more than \$100 for the 2nd offense.

First offense:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	Warning
More than 2 late reported interests	\$25 per late reported interests >2
Late reported interests ≥50% of all interests the principal has reported	\$25 for first late reported interest \$50 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$25 for first late reported interest \$50 for each additional late reported interest

The above penalties may be remediated as follows:

Principal reported <8 hours lobbying during reporting period	Warning only
Principal previously reported interest in another form (e.g., as a topic)	Warning only

¹ **§13.67 (1)**, Wisconsin Statutes, provides, in pertinent part:

13.67 Identification of legislative and administrative proposals and topics. (1) . . . no person may engage in lobbying as a lobbyist . . . and no principal may authorize a lobbyist to engage in lobbying . . . unless the principal reports to the board . . . each legislative proposal, budget bill subject and proposed administrative rule number in connection with which the principal has made or intends to make a lobbying communication or, if the lobbying does not relate to a legislative proposal or proposed administrative rule that has been numbered or a budget bill subject, each topic of a lobbying communication made or intended to be made by the principal. * * *

The principal shall file the report no later than the end of the 15th day after the date on which the principal makes a lobbying communication with respect to a legislative proposal, proposed administrative rule, budget bill subject or other topic not previously reported by the principal

* * * * *

Second offense within 3 years:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	\$25 per late reported interest
More than 2 late reported interests	\$25 per late reported interests <2 and \$50 per late reported interest >2
Late reported interests ≥50% of all interests the principal has reported	\$50 for first late reported interest \$75 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$50 for first late reported interest \$75 for each additional late reported interest

The above penalties may be remediated as follows:

Principal reported <8 hours lobbying during reporting period	Warning only
Principal previously reported interest in another form (e.g., as a topic)	Warning only

Third or more offense within 3 years:

Maximum statutory forfeitures

Other circumstances:

The staff may ask the Ethics Board to depart from the above forfeiture schedule if there are mitigating or aggravating circumstances. Mitigating circumstances might include:

- Principal is new.
- Personnel at principal are new.
- Principal brought mistake to Board's attention

Aggravating circumstances might include:

- Principal did not report interest at all
- Principal has violated other provisions of lobbying law

Forfeiture Schedules

Campaign Finance

Late filing of political committee registration (§11.05) – maximum penalty \$500

- Within 5 days – no penalty
- 6 to 10 days -- \$100
- 11 to 15 days -- \$250
- More than 15 days -- \$500
- Mitigating circumstance may include low level of activity

Late filing of continuing financial report (§11.20 (4)) – maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day

- Within 5 days – no penalty
- 6 to 10 days -- \$200
- 11 to 15 days -- \$500
- 16 to 30 days -- \$500 plus greater of \$25/day or .5% of salary /day
- More than 30 days – maximum
- Mitigating circumstance may include activity level less than \$1,000 of receipts or disbursements

Late filing of pre-primary and pre-election financial reports (§11.20 (2)) – maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day

- 1 day late – no penalty
- 2 days late -- \$250
- 3 days late -- \$500
- 4 or more days late – maximum
- Mitigating circumstance may include candidate loss in primary election

Failure to file reports electronically if required (§11.21 (16))

- Same penalties as if not filed

Late filing of paper report in follow-up of electronic filing (§11.21 (16)) – maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day

- Up to 15 days -- \$100
- More than 15 days -- \$250

Late reporting of last-minute contributions – 24 hour rule (§11.12 (5)) -- maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day

- 1 day late -- \$500
- More than 1 day late -- maximum

Late payment of filing fee (§11.055) – maximum penalty \$500 plus treble the payable fee

- \$300 until 10 days after notice
- \$500 from 11 to 18 days after notice
- Maximum penalty thereafter

Failure to report all contributor information (§11.06) -- maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day (on the theory that a report as required has not been filed)

- If information not provided within 10 days of notice – donate contribution to charity
- If report of charitable donation not provided within 20 days of notice – maximum penalty
- Mitigating circumstance may include inability to obtain required information

Failure to report all disbursement information (§11.06) -- maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day (on the theory that a report as required has not been filed)

- If information not provided within 10 days of notice -- \$100 plus 10% of disbursement amount (up to maximum)
- If information not provided within 20 days of notice -- \$100 plus 25% of disbursement amount (up to maximum)
- If information not provided within 30 days of notice – maximum penalty

Late disclosure of the receipt of a contribution -- maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day (on the theory that a report as required has not been filed)

- Up to 10 days late – 10% of contribution (up to maximum)
- From 11 to 20 days late – 25% of contribution (up to maximum)
- More than 20 days late – maximum penalty
- Aggravating circumstance may be that GAB discovers failure to disclose

Late disclosure of a disbursement -- maximum penalty \$500 plus the greater of \$50/day or (for a candidate committee) 1% of annual salary of the office/day (on the theory that a report as required has not been filed)

- Up to 10 days late – 10% of disbursement (up to maximum)
- From 11 to 20 days late – 25% of disbursement (up to maximum)
- More than 20 days late – maximum penalty
- Aggravating circumstance may be that GAB discovers failure to disclose

Receipt of excessive contribution (§11.26) – maximum penalty is \$500

- Donate excess to charity and pay 50% of excess as penalty (up to maximum)

Making excessive contributions (§11.26) – maximum penalty is treble the amount of the excess

- Pay 1 ½ times the excess

All other violations will be considered on a case-by-case basis.

Statements of Economic Interests

Late filing of Statement of Economic Interests (§19.43) – maximum penalty \$500

- Within 5 days – no penalty
- 6 to 10 days -- \$10
- 11 to 25 days -- \$50
- 25 to 30 days -- \$100
- More than 30 days -- \$250
- Mitigating circumstance may be that GAB staff failed to notify official of filing requirement

Lobbying law

Late principal registration (§13.64) – maximum penalty \$5000

- Within 7 days – warning
- 8 to 14 days -- \$250
- 15 to 21 days -- \$500
- 22 to 28 days -- \$750
- More than 28 days -- \$1,000

Late lobbyist license (§13.66) – maximum penalty \$1000

- Within 7 days – warning
- 8 to 14 days -- \$75
- 15 to 21 days -- \$125
- 22 to 28 days -- \$250
- More than 28 days -- \$500

Late authorization of a lobbyist by a principal (§13.65) – maximum penalty principal \$5000, lobbyist \$1000

- Within 7 days – warning
- 8 to 14 days -- \$125 (principal only)
- 15 to 21 days -- \$250 (principal only)
- 22 to 28 days -- \$375 (principal only)
- More than 28 days -- \$500 (principal only)

Late filing of semi-annual lobbying report (§13.68) – maximum penalty \$5000

- Within 2 business days – no penalty
- 3 to 6 business days -- \$50
- 7 to 14 days -- \$200
- 14 to 21 days -- \$500

Late notification of subject matter of lobbying (§13.67) – maximum penalty \$25 first offense, \$100 subsequent offenses if within 3 years

- See attached schedule

Improper campaign contribution by lobbyist §13.625) – maximum penalty \$1,000

- Recipient donates contribution to charity
- Lobbyist pays \$500 forfeiture

Staff should have the discretion to increase or decrease any forfeiture based on aggravating or mitigating circumstances. Such circumstances may include

**Late report of lobbying interests
Forfeiture Schedule**

First offense:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	Warning
More than 2 late reported interests	\$25 per late reported interests >2
Late reported interests ≥50% of all interests the principal has reported	\$25 for first late reported interest \$50 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$25 for first late reported interest \$50 for each additional late reported interest

Second offense within 3 years:

1 or 2 late reported interests <50% of all reported interests and <50% of principal's lobbying effort	\$25 per late reported interest
More than 2 late reported interests	\$25 per late reported interests <2 and \$50 per late reported interest >2
Late reported interests ≥50% of all interests the principal has reported	\$50 for first late reported interest \$75 for each additional late reported interest
≥50% of principal's lobbying effort was devoted to late reported interests	\$50 for first late reported interest \$75 for each additional late reported interest

Third or more offense within 3 years:

Maximum statutory forfeitures

2008 GAB 01
REPRESENTATION OF CLIENTS

The Government Accountability Board advises that a legislator continue the practice of not communicating with state agencies on behalf of special purpose districts that the legislator represents and that the legislator refer questions from department employees to other representatives of the districts who are not state public officials.

Facts

¶1 You are a member of the legislature and a lawyer in private practice. One of the main aspects of your practice is to represent local special purpose districts. At times, a state agency may have questions about the district. At other times, a district may request funding from a state agency. You have indicated that you have made a practice of not communicating with the employees of these departments in these matters.

Question

¶2 You ask how laws administered by the Government Accountability Board restrict your dealings with employees of these state agencies on behalf of the local special purpose districts that you represent.

Discussion

¶3 Section 19.45 (7), *Wisconsin Statutes*, provides:

(7) (a) No state public official who is identified in s. 20.923 may represent a person for compensation before a department or any employee thereof, except:

1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or
2. At an open hearing at which a stenographic or other record is maintained; or
3. In a matter that involves only ministerial action by the department; or
4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

¶4 Legislators are state public officials identified in §20.923 (2) (b), *Wisconsin Statutes*, so this provision applies to you. You receive compensation from your clients. It does not appear that any of the exceptions in the statute apply to the types of matters about which you have asked. The issue, then, is whether communicating on behalf of a client in connection with regulatory activities of a state agency or grant-making by a state agency is representing a person before a department or employee thereof. The answer is “yes.”

¶5 By its terms, the statute clearly includes legal representation.¹ The statute's bar appears to serve two purposes: (1) it prevents a state official from bringing undue pressure to bear on agencies and employees over whom the official may have budgetary or other authority and (2) it forecloses even the appearance of impropriety in an official being compensated because of the official's stature or position. There is nothing in the language of the statute to suggest that the words, "represent before" should be read narrowly to apply only to an appearance in a formal proceeding. Thus, we agree with the consistent interpretation of the Ethics Board that "represent before" includes an official's writing, telephoning, visiting, bargaining or negotiating with, or otherwise coming under a department's consideration.²

Advice

¶6 The Government Accountability Board advises that you continue your practice of not communicating with state agencies on behalf of special purpose districts that you represent and that you refer questions from department employees to other representatives of the districts who are not state public officials.

RA1

¹ 1998 Wis Eth Bd 3, ¶5; 4 Op. Eth. Bd. 89 (1981); 4 Op. Eth. Bd. 77 (1981).

² 1998 Wis Eth Bd 3, ¶6; 9 Op. Eth. Bd. 45, 47 (1987) ("Representation' embraces a concept much broader than legal representation. A salaried state public official should not write, telephone, or visit an officer or employee of a state entity in connection with his work for the proposed business except in the narrowly-defined circumstances authorized by 19.45(7).").

2008 GAB 02 DISQUALIFICATION

The Government Accountability Board advises that a legislator who is a lawyer may participate in the consideration and vote on a resolution which is a proposed constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for legal services for the indigent.

Facts

¶1 You are a member of the legislature and a lawyer. Currently, the Wisconsin Supreme Court requires lawyers licensed in Wisconsin to pay an annual assessment of \$50.00 to provide legal services to the indigent. Before the Assembly for consideration is 2007 Assembly Joint Resolution 30. This Joint Resolution is a proposed constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for such legal services.

Question

¶2 You ask whether laws administered by the Government Accountability Board restrict your participation in the consideration and vote on Assembly Joint Resolution 30.

Discussion

¶3 The provision of Wisconsin's Ethics Code that is most pertinent to your question is §19.45 (2), *Wisconsin Statutes*.¹ This section, reduced to its elements, provides that:

No state 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 the official.²

¶4 You are a state public official by virtue of being a member of the Legislature.³ For many years, the Ethics Board defined "substantial value" as anything of more than

¹ Section 19.46 (1), *Wisconsin Statutes*, does not apply. This provision, which more broadly prohibits an official from taking any official action substantially affecting a matter in which the official has a substantial financial interest, does not "prohibit a state public official from taking official action with respect to any proposal to modify state law." §19.46 (2), *Wisconsin Statutes*.

² Section 19.45 (2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state 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.

token or inconsequential value.⁴ We see no reason to depart from this understanding. We conclude that \$50 is not a nominal or inconsequential amount.⁵ Assembly Joint Resolution 30 would create a direct, measurable financial benefit for you. Nevertheless, you may participate in its consideration.

¶5 The Ethics Code, at §19.45 (1), *Wisconsin Statutes*, provides, in relevant part:

19.45 Standards of conduct; state public officials. (1) . . . The legislature . . . 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 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.

¶6 In recognition of this statutory policy, the Ethics Board consistently held that, even if an official has a substantial financial interest in a legislative matter, the official may still participate in the matter's consideration, as long as:

- A. The official's action affects a whole class of similarly-situated interests;
- B. The official's interest is insignificant when compared to all affected interests in the class; and
- C. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class.⁶

¶7 The Ethics Board developed this test in recognition that the law favors an official's exercise of the official's public duties. As the Attorney General has put it, "A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner."⁷

³ Section 19.42 (13) (c), *Wisconsin Statutes*.

⁴ See, e.g., 2007 Wis Eth Bd 05; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

⁵ A good rule of thumb is that an amount of money or an item or service has substantial value if a reasonable person would care about retaining it.

⁶ See, e.g., 2007 Wis Eth Bd 10; 1992 Wis Eth Bd 22 ¶6-8; 1990 Wis Eth Bd 20 ¶4; 9 Op. Eth. Bd. 45 (1987); 8 Op. Eth. Bd.38 (1985); 5 Op. Eth. Bd. 90 (1982); 4 Op. Eth. Bd. 104 (1981).

⁷ 36 Op Att'y Gen 45 (1947). See also *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879).

¶8 We adopt this test. We further believe that your interest in the subject of the Joint Resolution is insignificant when compared to the entire class of 15,000 licensed Wisconsin lawyers all of whom would be equally affected by the proposal.

Advice

¶9 The Government Accountability Board advises that you may participate in the consideration and vote on 2007 Assembly Joint Resolution 30.

RA2

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For February 25, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Guidelines, Orders, Opinions, Certain Operating Procedures and Rules of the State Elections Board and the State Ethics Board

The Government Accountability Board (GAB) is required to hold one or more public hearings on the question of reaffirmation of each administrative rule, formal opinion, guideline, and each order promulgated, issued or developed by the State Elections Board and the State Ethics Board that is presently in effect. 2007 Wisconsin Act 1, Section 209 (2), (3). The Government Accountability Board (GAB) is also required to review certain internal operating procedures of the former boards.

The administrative rules, formal opinions, guidelines and orders of the former agencies expire one year from the initiation date of 2007 Wisconsin Act 1, subject to a limited extension by the GAB. The initiation date has been established as January 10, 2008. The review of administrative rules, formal opinions, guidelines, certain operating procedures and orders of the former agencies should be completed by January 10, 2009. The Board may extend its review by up to three months and renew the extension for an additional three months.

The staff has developed a schedule for the balance of this year to complete the review process. The staff organized the rules, opinions, guidelines, procedures and orders by subject matter to establish an initial timetable for review. The schedule is attached for consideration by the Board.

I expect the schedule will be adjusted as the Board proceeds. The schedule may also be modified in response to public input and the exigencies of the election cycle. I recommend the Board direct staff to proceed to submit matters for review pursuant to the proposed schedule. The motion permits the Director to modify the schedule in consultation with the Chair.

Proposed Review Schedule

Monday, January 28, 2008

Complaints: ElBd Chapter 10, ETH 3.01, ETH 3.04

Training Election Officials: ElBd Chapter 12, ElBd Chapter 13

Monday, February 25, 2008

Petitions: (2 opinions - ElBd. Op. 76-8, ElBd. Op. 86-2); ElBd Chapter 2

Recount: (1 opinion - ElBd. Op. 76-11); Manual

State Officials - Conflicts of Interest: (17 ETH opinions)

State Officials – Representing Clients before State Agencies:

Settlement Offer Schedules

Wednesday, March 26, 2008

Ballot and Voting Equipment Security: ElBd Chapter 5

Coordination of Campaign Activity: (1 opinion - ElBd. Op. 00-2)

Government Resources: (4 opinions - ElBd. Op. 74-6, ElBd. Op. 76-12, ElBd. Op. 76-16, ElBd. Op. 78-12)

Independent Expenditures: (1 opinion - ElBd. Op. 78-8); ElBd 1.42, ElBd 1.50

Scope of Regulation: (11 opinions - ElBd. Op. 74-4, ElBd. Op. 76-12, ElBd. Op. 76-16, ElBd. Op. 77-3, ElBd. Op. 79-2, ElBd. Op. 79-3, ElBd. Op. 79-4, ElBd. Op. 86-3, ElBd. Op. 00-2, ElBd. Op. 03-1, ElBd. Op. 06-1); ElBd 1.28, ElBd 1.29

State Employee Activity: (3 opinions - ElBd. Op. 75-2, ElBd. Op. 76-2, ElBd. Op. 76-16)

Voter Registration: (3 opinions - ElBd. Op. 76-10, ElBd. Op. 80-1, ElBd. Op. 81-1), ElBd Chapter 3

Monday, May 5, 2008

Non-Resident Committees: (2 opinions - ElBd. Op. 74-7, ElBd. Op. 75-3); ElBd 1.10

Recordkeeping and Reporting: (13 opinions - ElBd. Op. 74-9, ElBd. Op. 74-10, ElBd. Op. 74-16, ElBd. Op. 74-17, ElBd. Op. 75-5, ElBd. Op. 76-1, ElBd. Op. 76-4, ElBd. Op. 76-13, ElBd. Op. 77-9, ElBd. Op. 78-2, ElBd. Op. 88-3, ElBd. Op. 00-1, ElBd. Op. 01-1); ElBd

1.05, ElBd 1.11, ElBd 1.15; ElBd 1.20, ElBd 1.26; ElBd 1.30, ElBd 1.43, ElBd 1.46, ElBd 1.55, ElBd 1.56; ElBd 1.60, ElBd 1.65

Registration: (1 opinion - ElBd. Op. 74-13); ElBd 1.02; ElBd 1.41, ElBd 6.02

Ballots: (8 opinions - ElBd. Op. 76-9, ElBd. Op. 78-14, ElBd. Op. 78-16, ElBd. Op. 78-17, ElBd. Op. 79-1, ElBd. Op. 80-2, ElBd. Op. 87-1, ElBd. Op. 88-1)

Challenging Electors: ElBd Chapter 9

Observers: ElBd Chapter 4

Voting Equipment: ElBd Chapter 7

Monday, June 9, 2008

Contribution Limits: (8 opinions - ElBd. Op. 74-2, ElBd. Op. 74-5, ElBd. Op. 75-7, ElBd. Op. 77-1, ElBd. Op. 78-4, ElBd. Op. 78-15, ElBd. Op. 81-2, ElBd. Op. 97-1); ElBd 1.04, ElBd 1.25, ElBd 1.32, ElBd 1.385, ElBd 1.95

Disclaimers: (3 opinions - ElBd. Op. 74-6, ElBd. Op. 76-14, ElBd. Op. 77-10); ElBd 1.655

Spending: (3 opinions - ElBd. Op. 74-19, ElBd. Op. 75-4, ElBd. Op. 76-7); ElBd 1.44, ElBd 1.70, ElBd 1.75

Absentee Voting: (1 opinion - ElBd. Op. 77-4, ElBd. Op. 88-2)

Electioneering: (3 opinions - ElBd. Op. 78-7, ElBd. Op. 81-3, ElBd. Op. 07-1)

Campaign activity and contributions: (16 ETH opinions)

Lobbying Guidelines: (4)

Wednesday, July 16, 2008

Soliciting and accepting items and services of substantial value: (46 ETH opinions)

Improper use of state resources: (3 ETH opinions)

Statements of Economic Interests: (2 ETH opinions); ETH 2

Substantive Ethics Guidelines: (39)

Financial Disclosure Guidelines: (5)

Counting Votes: (1 opinion - ElBd. Op. 77-5)

Election Costs: (1 opinion, ElBd. Op. 94-1); Clerk Manual

Thursday, August 28, 2008

Solicitation: (2 opinions - ElBd. Op. 77-7, ElBd. Op. 78-6)

Wisconsin Election Campaign Fund: (4 opinions - ElBd. Op. 78-3, ElBd. Op. 78-5, ElBd. Op. 78-9, ElBd. Op. 84-1); ElBd 1.34, ElBd 1.36, ElBd 1.38, ElBd 1.45, ElBd 1.455

Accepting meals and travel: (22 ETH opinions)

Acceptance of fees and honoraria: (5 ETH opinions)

Registration and reporting: (15 ETH opinions); ETH 1

Accepting meals, gifts, employment, etc.: (51 ETH opinions)

Monday, October 6, 2008

Conduits: (5 opinions - ElBd. Op. 74-1, ElBd. Op. 76-15, ElBd. Op. 78-1, ElBd. Op. 89-1, ElBd. Op. 98-1); ElBd 1.85, ElBd 1.855

Corporations and PACs: (14 opinions - ElBd. Op. 74-18, ElBd. Op. 75-6, ElBd. Op. 75-8, ElBd. Op. 76-5, ElBd. Op. 76-6, ElBd. Op. 77-8, ElBd. Op. 78-10, ElBd. Op. 78-11, ElBd. Op. 78-13, ElBd. Op. 79-5, ElBd. Op. 80-3, ElBd. Op. 82-1, ElBd. Op. 88-4, ElBd. Op. 91-1); ElBd 1.06, ElBd 1.33

Earmarking: (2 opinions - ElBd. Op. 76-3, ElBd. Op. 77-6)

Joint Fundraising: (1 opinion - ElBd. Op. 86-1)

Monday, November 10, 2008

Treasurer: (2 opinions - ElBd. Op. 74-11, ElBd. Op. 74-15)

Training Election Officials: (1 opinion - ElBd. Op. 75-1); ElBd Chapter 11

Local Officials Conflicts of interest: (33 opinions)

Local Officials Acceptance of items: (3 opinions)

Local Officials Other: (2 opinions)

Wednesday, December 17, 2008

Federal Campaigns: (4 opinions - ElBd. Op. 74-3, ElBd. Op. 77-2, ElBd. Op. 77-3, ElBd. Op. 00-3); ElBd 1.39

Vacancy: (3 opinions - ElBd. Op. 89-2, ElBd. Op. 95-1, ElBd. Op. 05-1)

Recall: Manual

Electronic Filing: ElBd 6.03, ElBd 6.04

Forms: ElBd Chapter 8, ETH 5

Staff Assistance: ElBd 6.02, ETH 3.30

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: February 20, 2008
TO: Members, Wisconsin Government Accountability Board
FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability
SUBJECT: Review Ethics Board opinions and Guideline on conflicts of interest

Accompanying this memorandum are digests of cases and a guideline that addresses the Ethics Code's restrictions on conflicts of interest. I recommend that the Government Accountability Board reaffirm each opinion, except those noted to be obsolete, and reaffirm Guideline 232.

I think the important points in these opinions are:

1. Even if an official has a substantial financial interest in a legislative or quasi-legislative matter, the official may still participate in the matter's consideration, as long as:
 - A. The official's action affects a whole class of similarly-situated interests;
 - B. The official's interest is insignificant when compared to all affected interests in the class; and
 - C. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class.

See prior adoption of this interpretation in 2008 GAB 2.

2. Public policy supports a public official's exercise of official duties when the financial effect of an official decision on the official's personal interests is uncertain and speculative. *E.g.*, 1995 Wis Eth Bd 04.

3. An official should not vote on issues of concern to a business or organization from which the official receives compensation. Although such a business may not be "an organization with which the official is associated" the receipt of compensation could reasonably be expected to influence the official's judgment. *E.g.*, 2004 Wis Eth Bd 06

4. Even if the state budget contains a provision on which a legislator should not vote, the legislator may vote on the budget as a whole. *E.g.*, 2007 Wis Eth Bd 05.

5. "Substantial value" means more than "token or inconsequential value." *See* prior adoption of this interpretation in 2008 GAB 2.

6. If an official should not participate in a matter, the official should not participate in discussions, debate, or vote on the matter. *E.g.*, 2004 Wis Eth Bd 06 Supp.
7. Even if, by statute, an individual serves on a state board as a representative of a business or industry, the individual may not participate in a judicial or quasi-judicial matter in which the individual or the individual's business has a substantial financial interest. *E.g.*, 1995 Wis Eth Bd 1.
8. Conflict of interest provisions do not apply to another government entity with which an official is associated because a government entity is not, by definition, an "organization" *E.g.*, 1995 Wis Eth Bd 3.

STATE OFFICIALS' CONFLICTS OF INTEREST

Statutes: §19.45 (2) (3) and §19.46, Wisconsin Statutes

19.45 (2) No state 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.

(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.

19.46 Conflict of interest prohibited; exception. (1) Except in accordance with the board's advice under s. 5.05 (6a) and except as otherwise provided in sub. (3), no state public official may:

(a) 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.

(b) 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) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

Ethics Board opinions:

DISQUALIFICATION.....[2007 Wis Eth Bd 10](#)

Two reasons cause us to conclude that the provision just cited does not bar your voting on, or otherwise participating in the consideration of 2007 Assembly Bill 243.

1. The bill's effect, if any, on your spouse's finances is remote and speculative. Public policy supports a public official's exercise of official duties when the financial effect of an official decision on the official's personal interests is uncertain and speculative.

2. As we noted in the Ethics Board’s guideline, “Mitigating conflicting interests: private vs. public responsibility” [Ethics Board publication #232], an official may participate in a legislative action, even though the action will affect the official or a member of the official’s immediate family as long as:

- * The official’s action affects a whole class of similarly-situated interests;
- * Neither the official’s interest, the interest of a member of the official’s immediate family, nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; AND
- * The action’s effect on the interests of the official or of a member of the official’s immediate family is neither significantly greater nor less than upon other members of the class.

DISQUALIFICATION.....[2007 Wis Eth Bd 05](#)

The Ethics Board advises that a legislator not participate in any discussions, debate, or votes on a proposed budget provision that would provide tax credits totaling several million dollars to each of only a handful of businesses in Wisconsin and the value of the credits to the legislator’s family could be as much as several thousand dollars. If the proposal is incorporated in the budget, it will not be an obstacle to the legislator’s participation in the consideration of other budget provisions or the budget as a whole.

DISQUALIFICATION.....[2007 Wis Eth Bd 03](#)

The Ethics Code is unlikely to be an obstacle to a legislator’s participation in the discussion, deliberation, or votes on a bill that would create a tax incentive for individuals who purchase a commodity that can use a product manufactured by a company in which the legislator owns a small number of shares of stock when there is no basis to believe there will be a substantial financial affect on the legislator’s interest.

DISQUALIFICATION.....[2007 WIS ETH BD 02](#)

The Ethics Board has no basis for believing that the bill will promote your business’s sale of items. If our understanding is correct, then:
your action on the bill will not result in a substantial benefit for your business [§19. 45 (2)];
your business does not have a substantial financial interest in the bill [§19. 46 (1) (a)];
and
your action on the bill will not produce or assist in the production of a substantial benefit for your business [§19. 46 (1) (b)]

DISQUALIFICATION.....[2004 Wis Eth Bd 6 supp](#)

You have asked us to clarify on what issues you are precluded from participating as an official. You should not use your governmental position to advance the issues about which you are providing professional services to the organization that has

employed you or issues reasonably and proximately related to them. You are well positioned to identify those issues.

You should not participate in discussions, deliberations, or votes of the legislature, its caucuses, committees, or components that pertain to the issues or matters proximately related to issues about which you provide services to your employer. That directive is tempered by our recognition that you may, consistent with our advice, participate in discussions, deliberations, and votes on all other portions of and the passage of the state budget and omnibus bills only small components of which pertain to the subjects on which your governmental action is proscribed.

DISQUALIFICATION [2004 Wis Eth Bd 6](#)
A legislator should not accept money from a private organization to affect the laws of other states and simultaneously participate in legislative discussions, consideration, or votes in Wisconsin on the same issues. The legislator may cure the conflict between the private employment and governmental responsibilities by forgoing one of those relationships. Short of eliminating the conflict, the legislator may mitigate it by withdrawing from legislative discussions, consideration, or votes on public policy issues in Wisconsin which the legislator is being paid to affect elsewhere.

DISQUALIFICATION [1999 Wis Eth Bd 8](#)
The Ethics Code does not limit a legislator’s participation in the consideration of a bill to limit fees chargeable for copies of health care records where the bill does not affect the legislator’s personal interests nor the interests of a current or future customer of the legislator’s business except to the extent it would affect anyone who would want a copy of a patient’s health care records.

DISQUALIFICATION [1998 Wis Eth Bd 14](#)
The Ethics Board advises:
(1) That a state public official not accept compensation from the official’s private clients for time spent serving as a state public official on a task force created by the Legislature to investigate and report on tax issues affecting the industry of which the clients are a part; and
(2) That a state public official not participate as a member of the task force in matters that could have a substantial financial impact on the official’s private clients or that could produce a substantial benefit for them.

DISQUALIFICATION [1997 Wis Eth Bd 1](#)
The Ethics Board advises that a legislator not advocate for, or participate in discussions, deliberations, or votes on funding a state contract with a foundation in which the legislator’s spouse is executive director. If the biennial budget appropriates money to the foundation, the legislator may participate in debate, discussion, and voting on all other budget issues, and vote on the budget itself.

DISQUALIFICATION..... [1996 Wis Eth Bd 3](#)

Unless a legislator’s family’s business determines that it will try to benefit financially from video gambling devices if those devices are legalized, the legislator may, without restriction from the Ethics Code, sponsor, promote, or vote on legislation to legalize such devices.

DISQUALIFICATION..... [1995 Wis Eth Bd 6](#)

The Ethics Board advises that a member of the governing board of a state agency should not participate in discussing, evaluating, or voting whether to award a financial grant to a business with which the member is associated or to a grant competitor. Moreover, the board should not award a grant to any business in which a member of the board or the member’s immediate family has a direct pecuniary interest.

DISQUALIFICATION..... [1995 Wis Eth Bd 4](#)

The laws the Ethics Board administers do not restrict an official’s participation in an agency’s decision whether or not to recommend the state’s undertaking a transportation project where the effect of the transportation project on the official’s spouse’s business is remote and speculative.

DISQUALIFICATION..... [1995 Wis Eth Bd 3](#)

As a general proposition, a legislator's simultaneous membership on the governing board of a governmental entity is not an obstacle to the legislator's discussions, deliberations, and votes upon matters before the Legislature that affect the entity.

A legislator should not simultaneously receive compensation for services as a member of a governmental agency’s governing board and participate as a legislator in actions affecting a bill that would increase or sustain or preserve the legislator’s eligibility to receive compensation from the entity.

DISQUALIFICATION..... [1995 Wis Eth Bd 1](#)

A member of an agency governing body who would receive an allocation of business opportunities regulated by the agency, whose spouse would receive an allocation, or whose business would use an allocation under a proposed rule should not participate, in an official capacity, in the rulemaking, even though, by statute, some members of the agency governing body must be active in the regulated business.

DISQUALIFICATION..... [1994 Wis Eth Bd 3](#)

The Ethics Board advises that the lobbying law does not pose an obstacle to an official’s spouse's employment as a lobbyist. However, an official should avoid placing himself or herself in a position in which a conflict of interest may arise. In instances of occasional and infrequent conflicts, an official can avoid a violation of the Ethics Code by refraining from any official discussions or votes on matters on which the spouse's employer lobbies or has a demonstrated interest before the official’s agency. An official should also refrain from extending any special access or assistance to his or her spouse or spouse's employer in agency matters. If conflicts

are frequent and continuing, public policy may best be served by divesting either the private interest or the public responsibilities.

DISQUALIFICATION [1992 Wis Eth Bd 33](#)

A member of a state regulatory board should refrain from participating in any discussions or decisions concerning educational and course requirements for members of the profession regulated by the board while the official serves as a consultant to an organization that sets generally accepted practice standards for the profession and approves educational courses required by many government bodies, and the official should not, in any way, use his or her position to benefit the organization. If these restrictions materially impede the official's ability to fulfill his or her responsibilities as a public official, the official might withdraw from the official's consulting contract or relinquish his or her public position so that another appointee may participate fully in the activities of the board.

DISQUALIFICATION [1992 Wis Eth Bd 32](#)

A state public official should not accept a paid position as a member of a private company's advisory board unless:

- a. the official's appointing authority has determined the private pursuit will not conflict with his or her official duties or reflect adversely upon the official's agency and
- b. the official can demonstrate that the position is offered primarily for reasons independent of holding a state public office.

If the official accepts the private position, the official should not:

- a. use the state's time or resources while engaging in company-related activities;
- b. use his or her official position to benefit the company;
- c. participate in an official decision that will affect the company in a way significantly different from the way the decision affects other companies; or
- d. use confidential information the official acquires from his or her state job to help the company.

DISQUALIFICATION [1991 Wis Eth Bd 2](#)

An official of a state agency may continue to receive income from a former partnership where the income is unrelated to the official's holding public office. The income is reportable but is not a security if it is derived from the former partner's share of receivables. The official need not disqualify from matters before the agency in which the former partnership is involved as long as the official has no economic interest in those matters.

IMPROPER USE OF OFFICE [2005 Wis Eth Bd 05](#)

The Ethics Board advises that a board member of an institution of higher education whose spouse is employed as a teacher by the institution:

1. not participate in negotiations, discussions, or votes on the teachers' contract;

2. may vote on the institution's budget if the board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;
3. not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner;
4. may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a board member's spouse obtaining a substantial benefit or anything of substantial value from such decision;
5. may participate in decisions affecting teaching load, teaching hours, and other general policy decisions if the effect on the board member's spouse does not differ materially from the effect on other teachers; and
6. if the board member is covered by the institution's health benefits plan, not participate in consideration of the terms of that plan or the award of the institution's health benefits contract.

The Ethics Board further advises that abstention does not avoid a conflict, it simply mitigates it. If the above restrictions materially impede the board member's ability to fulfill his or her responsibilities as a public official, or conflicts are frequent and continuing, the member should consider withdrawing from the position so that another appointee may participate fully in the activities of the board.

DISQUALIFICATION; A legislator should not participate in official discussions, deliberations, or votes with respect to legislation to sustain or alter a statute affecting the requirements for the official's spouse's employment unless the action affects a whole class of similarly-situated interests, the legislator's interest is insignificant when compared to all affected interests, and the action's effect on the legislator's private interests is neither significantly greater nor less than upon other people affected by the act. Eth. Bd. 525, Volume **XI**, Page 9

DISQUALIFICATION; REPRESENTATION OF CLIENTS; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; With respect to a member of a state board, the Ethics Code's application to these circumstances is discussed:

- a. Official action directly affecting the official's personal interest;
- b. Official action directly affecting a client of the official's firm;
- c. Action the official, in a public capacity, may take involving a matter in which the official personally or a client of the official's firm is interested; and
- d. Action the official, in a private capacity, or a member or employe of the official's firm may take involving a matter about which the official, as a public officer, is authorized to take some discretionary action. Eth. Bd. 365, Volume **X**, Page 13

DISQUALIFICATION; If a member of a government board is associated with a corporation, the member, ordinarily should not, as a member of that board, participate in discussions, deliberations, or votes concerning that corporation; however, the member need not withdraw from a matter if the matter is so broad that it affects scores of

organizations among which the corporation is not especially significant and the action's effect on the corporation is neither greater nor less than upon the other affected organizations. Eth. Bd. 360, Volume **X**, Page 3

EMPLOYMENT CONFLICTING WITH OFFICIAL DUTIES; REPRESENTATION OF CLIENTS; LEGISLATORS; DISQUALIFICATION; A state legislator should not, in connection with his business, refer to his official position except in a limited circumstance. A state official should not, except in narrow circumstances, communicate with a state official or employe on behalf of the official's business. A state official must give notice of his interest in contract before official's business enters into contract paid for state funds. A legislator should not act officially in a way likely to affect legislator's business unless business is insignificant member of larger class affected by legislation. Eth. Bd. 346, Volume **IX**, Page 45

DISQUALIFICATION; When confronted with a need for legal counsel in a matter in which the Attorney General is unable to act, it is appropriate for the affected state agency to ask the Governor to designate special counsel. Eth. Bd. 338, Volume **IX**, Page 35

DISQUALIFICATION; A state board's earlier award of a grant to an organization does not bar a member of the board from later working for the organization as a paid consultant in a capacity unsupported by the grant; nor does a board member's working as a paid consultant to an organization foreclose the board's award of a grant to the organization unless the member or the member's immediate family would benefit from the grant. In any event the board member may not in either a public or private capacity promote a grant to an organization of which the member is a paid consultant. Eth. Bd. 336, Volume **IX**, Page 31

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; COMPATIBILITY OF OFFICES; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A member of a state board should not be the direct financial beneficiary of that board's actions.

A member of a state board should not accept a payment from an interested party to prepare a matter for review and action by the board.

Compatibility of membership on board and municipal employment discussed. Eth. Bd. 324, Volume **IX**, Page 7

DISQUALIFICATION; If the owner of a regulated business became the chief executive of a state agency responsible for regulating that business, then the owner's personal financial interests would conflict with his public responsibilities whenever, in the discharge of official duties, he was confronted by a matter in which his business had a substantial financial interest including action affecting his business and its competitors.

If the conflict were substantial and continually present or frequently recurring, the conflict's cure could come only from the person's divesting himself of the regulated business. Eth. Bd. 304, Volume **VIII**, Page 33

DISQUALIFICATION; A board that awards grants should not consider an application for a grant from which one of the board's members or the member's immediate family would benefit financially. Having disqualified himself or herself from considering an application for a grant, a person should not participate in a subsequent ranking of that application relative to others. Eth. Bd. 303, Volume **VIII**, Page 31

LEGISLATORS; DISQUALIFICATION; A legislator who practices a trade or profession may participate in votes, deliberations, discussions and other legislative activities likely to affect that trade or profession as long as:

- a. The legislator's presence in the class of people affected by the legislator's action is insignificant when compared to the number of similarly situated people in the affected class, and
- b. The legislator's actions' effects upon himself or herself are neither significantly greater nor less than upon other members of the class. Eth. Bd. 300, Volume **VIII**, Page 21

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from decision making are discussed. Eth. Bd. 298, Volume **VIII**, Page 11

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A state public official should not:

- a. as a representative of a firm, participate in a matter pending before or likely to be appealed to the state panel of which the official is a part;
- b. as an officer of a state agency, participate in a matter pending before or likely to be appealed to the state panel of which the official is a part if the firm with which the official is affiliated is involved;
- c. rely upon his or her title or a state agency's prestige to attempt to acquire new or additional business for a firm with which he or she is associated. Eth. Bd. 284, Volume **VII**, Page 21

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from discussions and decisions concerning grants to people and organizations are discussed. Eth. Bd. 280, Volume **VII**, Page 11

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Circumstances under which a member of a board should disqualify self from decision making are discussed. Eth. Bd. 278, Volume **VII**, Page 5

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; USE OF STATE'S TIME, FACILITIES, SUPPLIES AND SERVICES; The Ethics Code does not forbid a state public official to hold an office in an organization, provided:

- a. the official does not use his or her public position to obtain a substantial favor or service for the organization;

- b. the official does not, in furtherance of the official's responsibilities to or interest in the organization, rely upon the state's facilities, supplies, or services that are not generally available to all of Wisconsin's residents; and
- c. that if in the discharge of official duties the official confronts a matter in which the organization has a substantial interest, the official gives his or her superior a written statement describing the nature of the possible conflict and the superior assigns the matter to a person not subject to the conflicting interests. Eth. Bd. 270, Volume VI, Page 41

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; PUBLIC CONTRACTS; As long as a nominee to a state board retains a 10% or greater interest in a private business, he or she may not use his or her public position to obtain financial gain or anything of substantial value for that business except under certain conditions.

The nominee's private company may not enter into a state contract or lease involving a payment exceeding \$3,000 within 12 months unless the nominee's relationship to the private business is disclosed to the Ethics Board and the agency acting for the state with regard to its contract. Further the nominee should disqualify himself or herself from any matter coming before the board which involves the nominee's private business, and the board's minutes should reflect the nominee's absence from the discussion and voting upon the issue. Eth. Bd. 266, Volume VI, Page 33

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; The Ethics Board approved a course of conduct for a member of a state board concerning his or her withdrawal from certain official actions involving the board and the official's private interests. Eth. Bd. 259, Volume VI, Page 27

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code does not prohibit a state public official's continued employment with a law firm while the official is serving on a part-time board provided (a) the official does not represent the firm before that board, (b) the official does not participate in any vote or discussion concerning a legal proceeding in which the official's law firm represents interests adverse to those of the board, and (c) the official's actions are consistent with the Supreme Court's rules. Eth. Bd. 243, Volume V, Page 93

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; BOARDS, COMMISSIONS AND AGENCIES; A person who is a state public official by virtue of his or her membership on a state board may not participate in that board's consideration of an appeal concerning a controversy involving the official or the official's partner, but the Ethics Code will not ordinarily pose an obstacle to the official's participation in the board's decisions in which the official does not have a financial stake. The Ethics Code does not pose an impediment to an official's participation in votes, deliberations, and discussions concerning the board's work and its employment of independent contractors as long as the official's action affects a large class of similarly situated people and businesses, the official's presence in the class is insignificant when compared to the number of members of the class, and the official's

actions' effects upon his or her own self interest are neither significantly greater nor less than upon other members of the class.

If an agency's selection and payment of independent contractors is a ministerial function not requiring the exercise of discretion by members of the board which direct the agency, the Ethics Code does not pose an obstacle to the agency's entrance into a contract with a member of that board or with the member's partner. Eth. Bd. 242, Volume V, Page 89

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code discourages a state public official from representing a person in a matter over which the official or the official's colleagues or subordinates must take official action or exercise some official judgment. Eth. Bd. 239, Volume V, Page 79

IMPROPER USE OF OFFICE; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; The Ethics Code bars a public official from taking any official action likely to affect a business in which he or she has a 10% or greater interest unless:

- a. his or her action affects the whole class of similarly situated businesses,
- b. the business's presence in the class is insignificant when compared to the number of members of the class and
- c. his or her action's effect upon the business 1) is neither significantly greater nor less than upon other members of the class or 2) results from the regular process of competitive bids.

In addition the official may not intentionally use or disclose any information which could result in the receipt of anything of value for the business had the information not been communicated to the public.

The business may not enter into a contract or lease involving a payment or payments of more than \$3,000 within 12 months in whole or in part derived from the state's funds unless the official has disclosed in writing the nature and extent of his or her relationship or interest to the Ethics Board and to the department acting for the state with regard to the contract or lease. Eth. Bd. 235, Volume V, Page 65

OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATIONS; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; LEGISLATORS; DISQUALIFICATION; A legislator should not participate in votes, deliberations, discussions, or other legislative activity likely to affect a business with which he or she is associated except to the extent that:

- a. the legislator's actions affect the whole class of similarly situated businesses,
- b. the business's presence in the class is insignificant when compared to the number of members of the class, and
- c. the effects of the legislator's actions upon the business are neither significantly greater nor less than upon other members of the class. Eth. Bd. 234, Volume V, Page 59

DISQUALIFICATION; The Ethics Code does not bar a state public official's participation in a program administered by a state agency of which he or she is a member of the policy making board provided (1) the official neither seeks nor receives any consideration with regard thereto that the official would not receive were he or she not a state public official and (2) the official does not act officially with respect to a matter in which he or she has a personal interest except to the extent that the official's personal interest in the matter is insignificant when compared with the interests of others in the same matter. Eth. Bd. 228, Volume **IV**, Page 103

DISQUALIFICATION; The Ethics Code does not compel a state public official to refrain from acting officially with respect to a business with which the official's spouse has a contract for professional services provided the spouse does not receive payments from the business in connection with projects financed through the public body of which the official is a member. Eth. Bd. 227, Volume **IV**, Page 97

JUDGES; DISQUALIFICATION; FEES AND HONORARIUMS; The public's perception of an impartial judiciary would best be served by a judge's withdrawal from officiating in matters involving the judge's business associates, even though the Ethics Code does not require that result in all cases. Eth. Bd. 210, Volume **IV**, Page 49

BOARDS, COMMISSIONS AND AGENCIES; IMPROPER USE OF OFFICE; DISQUALIFICATION; COMPATIBILITY OF OFFICES; Wisconsin's Code of Ethics for Public Officials and Employees does not require a member of a board, whose members by statute are required to be representatives of local governments, to withdraw from participating in decisions of the board simply because the official is an officer of a local government potentially affected by the Board's actions. However, it would be inappropriate for a member of the board to benefit personally, as opposed to officially, from any action of the board. Eth. Bd. 201, Volume **III**, Page 93

BOARDS, COMMISSIONS AND AGENCIES; PUBLIC CONTRACTS; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; IMPROPER USE OF OFFICE; The Code of Ethics for Public Officials and Employees would pose no impediment to a person's appointment to a board while the person is an officer of an organization with which the board transacts business. However, the person's private interests would impair his or her ability to participate in the board's actions. Eth. Bd. 197, Volume **III**, Page 83

DISQUALIFICATION; LEGISLATORS; The Ethics Code does not require a legislator to withdraw from votes, deliberations, or other actions concerning legislation that might affect organizations of the type with which his or her spouse is associated.

A legislator must give the Ethics Board and the presiding officer of his or her house written statement describing the legislator's substantial interest in a matter before the house of the Legislature. The presiding officer must have the statement published in the legislative journal. A legislator may satisfy this requirement by filing a blanket statement of matters in which the legislator and his or her immediate family are substantially interested. Eth. Bd. 190, Volume **III**, Page 67

BOARDS COMMISSIONS AND AGENCIES; DISQUALIFICATION; A state agency's adoption of a plan for avoiding conflicts between its administrator's personal interests and public responsibilities is desirable and makes it unnecessary for the official to consult the Ethics Board each time he or she is subjected to conflicting interests. Eth. Bd. 162, Volume **II**, Page 82

BOARDS COMMISSIONS AND AGENCIES; DISQUALIFICATION; FEES AND HONORARIUMS; Where a member of an examining board did not participate in preparation of the board's examination for licensure, he or she may accept an honorarium from a college in appreciation of his or her providing instruction to a student of a field regulated by the examining board; but a member of the examining board who prepares or administers or is privy to the board's examination should not instruct students preparing themselves for the examination regardless of whether compensation is offered. Eth. Bd. 157, Volume **II**, Page 75

GRANTS; DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; A member of a panel which advises a state agency on the distribution of money should not benefit directly from the panel's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 141, Volume **II**, Page 49

PUBLIC CONTRACTS; GRANTS; BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member or employe of a part-time board or advisory panel should not benefit directly from the board's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 123, Volume **I**, Page 120

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member of an examining board should physically withdraw from the board's determinations and discussions in which his or her independence of judgment might be questioned by a reasonable and impartial observer but no special consequences flow from the member's association with a company which transacts business with the examining board's licenses. Eth. Bd. 122, Volume **I**, Page 119

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATIONS; A member of a part-time board who is a lawyer may be associated with a law firm which represents the board's employes in labor matters provided he or she acts to prevent private interests from interfering with public responsibilities. Eth. Bd. 116, Volume **I**, Page 111

LEGISLATORS, DISQUALIFICATION; By notifying the presiding officer of his or her house of a possible conflict between private interests and public responsibilities, a legislator may be excused from votes, deliberations and other actions concerning a matter. However, in the present case the legislator's withdrawal from consideration of a bill is not and should not be required by law. Eth. Bd. 106, Volume **I**, Page 102

PUBLIC CONTRACTS; GRANTS; BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; A member of a part-time board or advisory panel should not benefit directly from the board's actions and should not participate in official activities from which he or she may benefit even indirectly. Eth. Bd. 104, Volume I, Page 100

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; A person who, because he represents certain interests, is appointed to a part-time board responsible for reviewing administrative rules proposed by another agency should fully advise his colleagues of his actions prior to agreeing to draft, for compensation, the rules which the board of which he is a member will review. Eth. Bd. 95, Volume I, Page 90

DISQUALIFICATION; LEGISLATORS, IMPROPER USE OF OFFICE; A legislator may participate in debate and votes on a bill which may substantially and materially affect a company which is wholly owned by a corporation in which the legislator has stock when legislator's interest in parent company is so minute that the legislator will not share substantially in any benefits resulting from Legislature's action. Eth. Bd. 93, Volume I, Page 88

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; Members of part-time board should not participate in any official deliberations which might affect the official or organization with which the official is associated. Eth. Bd. 63, Volume I, Page 55

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; OFFICERS, DIRECTORS AND MEMBERS OF ASSOCIATIONS; JURISDICTION; Whenever a member of a part-time board or an organization with which the member is associated will realize anything of value from a proposal before the board, the member should disclose his or her interest to the other members and refrain from voting on or discussing the proposal.

The Ethics Code's standards of conduct do not apply to unsalaried officials whose appointments do not require the Senate's consent. Eth. Bd. 59, Volume I, Page 49

DISQUALIFICATION; POST EMPLOYMENT; LEGISLATIVE EMPLOYEES; A legislative employe contemplating employment with corporation with special interest in Legislature's actions should notify supervisor and disqualify self from matters of interest to potential employer. Eth. Bd. 58, Volume I, Page 48

REPRESENTATION OF CLIENTS; LEGISLATORS; DISQUALIFICATION; PUBLIC CONTRACTS; Although the Ethics Code does not prohibit a state public official from performing official duties, it does provide a way for a legislator to be excused from those duties in regard to a matter in which a possible conflict exists.

A legislator should not represent a person for compensation before a state agency unless the representation involves only ministerial actions by the agency or is a formal proceeding and is a matter of public record.

A state official should not enter into contract involving substantial payment from state funds unless disclosure has been made to Ethics Board or to agency acting for state. Eth. Bd. 46, Volume I, Page 35

EMPLOYMENT CONFLICTING WITH PUBLIC RESPONSIBILITIES; DISQUALIFICATION; Although the Code of Ethics for Public Officials does not prohibit a legislator from voting or otherwise performing his or her official duties, it does provide a way for a legislator to be excused from these duties in regard to a matter on which possible conflict exists. Eth. Bd. 40, Volume I, Page 28

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; After informing colleagues of nature of potential conflict a member of a part-time board should abstain from votes and participation in deliberations concerning matters in which private interest might conflict with official responsibilities. Eth. Bd. 26, Volume I, Page 20

EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; JURISDICTION; LEGISLATORS; The provisions of the Code of Ethics for Public Officials supersede the rules of either house of the Legislature.

*The Code of Ethics for Public Officials does not prohibit a legislator from voting or otherwise performing official duties, but a legislator should excuse himself or herself from voting on proposal of special interest to organization of which legislator is a salaried officer. Eth. Bd. 23, Volume I, Page 17**

*PUBLIC CONTRACTS; DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; Although a member of a state agency's governing body will not violate the Code of Ethics for Public Officials if he or she refrains from voting upon or discussing, as a state public official, the agency's approval of a contract in which the member is financially interested, the member should review the application of § 946.13, *Wisconsin Statutes*, with the Attorney General before proceeding. Eth. Bd. 18, Volume I, Page 14*

OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATION; DISQUALIFICATION; BOARD, COMMISSIONS AND AGENCIES; The Code of Ethics for Public Officials does not prohibit a member of a state agency's governing board (1) from taking any official action concerning one of the agency's programs which was the subject of legal proceedings to which the official was a party prior to assuming state public office or (2) from being a member of or contributing to non-profit organizations which lobby for and against proposals affecting the agency and matters regulated by it. Eth. Bd. 17, Volume I, Page 14

BOARDS, COMMISSIONS AND AGENCIES; DISQUALIFICATION; Provided a member of a part-time board receives no special consideration from the state agency with which he or she is associated, there is no substantial and material conflict between the member's public responsibilities and his or her personal requests to the agency for advice and technical assistance and approval of various licenses, permits and plans. Moreover, the member may acquire or dispose of personal interests potentially of interest to the

* Italicized opinions are obsolete.

agency with which the member is associated after appropriate disclosures of interest and, where appropriate, disqualification from voting or discussion. Eth. Bd. 12, Volume **I**, Page 9

DISQUALIFICATION; BOARDS, COMMISSIONS AND AGENCIES; A member of an examining board should disqualify himself or herself from examining a candidate who is in the process of becoming an associate of the member in the licensed trade or profession. Eth. Bd. 11, Volume **I**, Page 8

Ethics Board Guideline 232

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: February 20, 2008

TO: Members, Wisconsin Government Accountability Board

FROM: Jonathan Becker, Administrator, Division of Ethics and Accountability

SUBJECT: Review of Ethics Board opinions and Guideline on state officials representing clients before state agencies

Accompanying this memorandum are digests of cases and a guideline that addresses the Ethics Code's restriction on state officials representing clients before state agencies. I recommend that the Government Accountability Board reaffirm each opinion, except those noted to be obsolete, and reaffirm Guideline 236.

I think the important points in these opinions are:

1. The statute does not restrict an official representing any person in court, including criminal defendants even if that includes dealing with a district attorney's office because a district attorney is a judicial officer and excluded from the meaning of "department." However, the attorney general's office and Department of Justice do fall within the definition of "department." *See* 2008 Wis Eth Bd 1 and opinions cited therein.
2. The restriction on an official representing a client before a state agency includes an official's writing, telephoning, visiting, bargaining or negotiating with, or otherwise coming under a department's consideration. *See* prior adoption of this interpretation in 2008 GAB 1.

STATE OFFICIALS REPRESENTING CLIENTS BEFORE A STATE AGENCY

Statute: 19.45 (7), Wisconsin Statutes,

19.45 (7) (a) No state public official who is identified in s. 20.923 may represent a person for compensation before a department or any employee thereof, except:

- 1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or
- 2. At an open hearing at which a stenographic or other record is maintained; or
- 3. In a matter that involves only ministerial action by the department; or
- 4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

Ethics Board opinions:

REPRESENTATION OF CLIENTS[2008 Wis Eth Bd 1](#)

The Ethics Board advises:

- 1) A legislator may represent clients in criminal matters unless the Department of Justice, rather than a district attorney, is prosecuting the matter but the legislator should account for whether such representation will undermine citizen confidence in government.
- 2) A legislator may represent a client in a licensure or regulatory matter before a state agency only in an open hearing at which a record is maintained; and
- 3) Other lawyers in the legislator’s firm whose work, judgment and compensation are not subject to the legislator’s review may represent clients in matters before state agencies.

REPRESENTATION OF CLIENTS[1998 Wis Eth Bd 3](#)

The Ethics Board advises:

that a salaried state public official not represent an individual for compensation in a legal claim against a state authority, its employees, or employees of the state.

REPRESENTATION OF CLIENTS[1993 Wis Eth Bd 5](#)

A legislator should not accept payment for consulting work if the legislator’s firm is being retained because he or she holds a position as a legislator, as opposed to simply having desirable political experience and insight. §§ 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*.

Second, a legislator should not accept payments for consulting work if that employment could reasonably be expected to influence the legislator's official judgment or actions. § 19.45(3), *Wisconsin Statutes*. A legislator's acceptance of payments from an organization with a substantial and demonstrated interest in issues likely to be addressed by Wisconsin's Legislature could reasonably be expected to affect his or her official judgment and actions in a manner sympathetic to the client. The standard imposed by the statute is an objective one. It is not enough that a legislator and his or her client are philosophically aligned. Rather, the question is whether a reasonable person would expect that the legislator's employment would influence his or her official judgment. For this reason, the Board recommends that a legislator not accept payments for offering consultation, advice, or strategy on issues if there is a reasonable possibility that they will be addressed by Wisconsin's Legislature.

REPRESENTATION OF CLIENTS [1993 Wis Eth Bd 4](#)

A legislator may not accept anything of pecuniary value from a lobbying principal. To the extent that a referendum committee is an intermediary, agent, or alter ego for a lobbying principal, a legislator should treat the referendum committee as if it were a lobbying principal and be guided by the advice given in 1992 Wis Eth Bd 26.

A legislator should not bid or negotiate for, nor should anyone offer him or her, work on behalf of a referendum committee if it involves a matter on which the legislator is authorized to take any discretionary action unless the Legislature has completed its final action on that matter.

Because referenda are part of the work of the Legislature, we recommend that a legislator not take pay to work on a referendum unless the legislator is confident that he or she can demonstrate that the employment is unrelated to being a member of the Legislature and is unlikely to influence the judgment the legislator exercises as a state official.

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code does not prohibit a state public official's continued employment with a law firm while the official is serving on a part-time board provided (a) the official does not represent the firm before that board, (b) the official does not participate in any vote or discussion concerning a legal proceeding in which the official's law firm represents interests adverse to those of the board, and (c) the official's actions are consistent with the Supreme Court's rules. Eth. Bd. 243, Volume V, Page 93

DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; The Ethics Code discourages a state public official from representing a person in a matter over which the official or the official's colleagues or subordinates must take official action or exercise some official judgment. Eth. Bd. 239, Volume V, Page 79

REPRESENTATION OF CLIENTS; Wisconsin's Code of Ethics does not pose an obstacle to a legislator's representing a client before a circuit or appellate court in a civil proceeding regardless of whether the legislator is compensated by the client directly or by a nonprofit organization that makes legal services available to all people and which derives no payments from the State of Wisconsin. A legislator may not represent a client before a state agency other than a court except in the very limited circumstances sanctioned by § 19.45(7), *Wisconsin Statutes*. Eth. Bd. 225, Volume **IV**, Page 89

REPRESENTATION OF CLIENTS; LEGISLATORS; INTERAGENCY COOPERATION; PUBLIC CONTRACTS; EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; The Ethics Code does not pose an obstacle to a legislator's representing a client before a judicial officer, including a district attorney, in either a civil or criminal proceeding.

A legislator may not represent a client before the Department of Health and Social Services or before the Office of the Governor except in very limited circumstances.

The Ethics Code does not bar an attorney, who is a member of the legislature, from representing a defendant in a criminal or paternity case when remuneration is paid by the Office of the State Public Defender; but the legislator should notify the Ethics Board and the State Public Defender of the proposed arrangement prior to accepting that appointment if the legislator is likely to receive more than \$3,000 from the Office of the State Public Defender within 12 months. Eth. Bd. 221, Volume **IV**, Page 77

EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES; REPRESENTATION OF CLIENTS; A state public official associated with a private law firm may participate neither as a state public official nor as another's legal representative in a matter before or likely to come before the state agency with which the official is associated if that law firm is involved. Eth. Bd. 214, Volume **IV**, Page 59

REPRESENTATION OF CLIENTS; Wisconsin's Code of Ethics for Public Officials and Employees does not bar a state public official from representing a client in a contested case before a state agency involving a party other than the state with interests adverse to those represented by the state public official. Eth. Bd. 188, Volume **III**, Page 63

REPRESENTATION OF CLIENTS; § 19.45(7), *Wisconsin Statutes*, prohibits a legislator from representing, for compensation, the interests of a business before any state agency or department. Eth. Bd. 200, Volume **III**, Page 91

REPRESENTATION OF CLIENTS; A state public official who is required to file a Statement of Economic Interests may represent a client for compensation in a contested case before a state agency (1) if and so long as a party other than the state, with interests adverse to the official's client's interests, is a party to the proceedings, or (2) at any open hearing at which a stenographic record is kept. Otherwise, the official's representation must be limited to matters that involve only ministerial action by the state agency. Eth. Bd. 161, Volume **II**, Page 80

REPRESENTATION OF CLIENTS; The Code of Ethics for Public Officials does not prohibit an unsalaried, part-time official from representing a client before a state agency in an open hearing of which a transcript is made. Eth. Bd. 156, Volume II, Page 73

REPRESENTATION OF CLIENTS; LEGISLATORS; DISQUALIFICATION; PUBLIC CONTRACTS; Although the Ethics Code does not prohibit a state public official from performing official duties, it does provide a way for a legislator to be excused from those duties in regard to a matter in which a possible conflict exists.

A legislator should not represent a person for compensation before a state agency unless the representation involves only ministerial actions by the agency acting for state. Eth. Bd. 46, Volume I, Page 35

REPRESENTATION OF CLIENTS; Although the Code of Ethics does not prohibit a lawyer-legislator from representing a client in proceedings before a state agency, the Board recommends that a legislator representing a client for compensation before an agency, do so only in a matter that involves only ministerial action by the agency or is a proceeding that is a matter of public record. Eth. Bd. 41, Volume I, Page 30

REPRESENTATION OF CLIENTS; Although nothing in the Code of Ethics prohibits lawyer-legislator from representing a client or self in proceeding conducted by state agency the rules of the Supreme Court may apply to this situation. Eth. Bd. 39, Volume I, Page 28

*REPRESENTATION OF CLIENTS; The Code of Ethics for Public Officials does not prohibit a legislator who is a lawyer from representing a client before a state agency. Eth. Bd. 7, Volume I, Page 6**

[*Ethics Board Guideline 236*](#)

* The italicized opinions are obsolete

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For February 25, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Opinions and Rules of the State Elections Board relating to Election-Related Petitions

This memorandum presents certain opinions and rules of the State Elections Board presently in effect relating to election petitions to the members of the Government Accountability Board (GAB) for reaffirmation.

The State Elections Board promulgated a set of administrative rules on the treatment of the sufficiency of nomination papers and other election-related petitions. EIBd Chapter 2, Wis. Admin. Code. <http://www.legis.state.wi.us/rsb/code/elbd/elbd002.pdf> The rules also spell out the procedure for challenging the sufficiency of election-related petitions. Election-related petitions include nomination papers, recall petitions, petitions for direct legislation and various petitions set out in provisions outside Chapters 5 – 12, Wis. Stats., that enable electors to place issues on the ballot or force local government to consider issues.

Petition circulators often fail to follow statutory and administrative procedures for preparing petitions, gathering signatures, preparing certificates of circulation and filing the petitions. The Board is required to promulgate rules to ensure uniform treatment of election related petitions. Section 8.40 (3), Wis. Stats. A copy of applicable statutes and the administrative rules accompanies this memorandum.

Since its inception the Elections Board reviewed challenges to the sufficiency of nomination papers. Since 1984, the Elections Board has also reviewed the decisions of local election officials with respect to the sufficiency of nomination papers and other election-related petitions pursuant to Section 5.06, Wis. Stats. The Elections Board uses the rules to resolve the issues presented.

In January, the Government Accountability Board's Director issued an opinion and order upholding the decision of the Milwaukee City Board of Election Commissioners to deny a candidate placement on the ballot because the nomination papers were not properly prepared, the candidate lacked the requisite number of signatures and did not timely correct the defects that could be corrected under the rules. On Friday, February 15, 2008, the decision was upheld in Milwaukee County circuit court. *Holloway v. City of Milwaukee Elections Board et al.* Milwaukee County Circuit Court Case No. 08-CV-2175.

Staff is not presenting any of the cases reviewed by the Elections Board because they resolved ballot access or petition sufficiency issues unique to the parties at a point in time. The

Government Accountability Board will establish its own precedent based on the application of the law and these rules to any cases presented.

The Elections Board issued two formal opinions concerning election-related petitions: [Opinion El.Bd. 76-08](#) and [Opinion El.Bd. 86-2](#). These opinions addressed two unique inquiries from participants in the electoral process.

[Opinion El.Bd. 76-08](#) provided guidance on the circulation of a petition for direct legislation. The potential circulator was concerned he would be foreclosed from getting a question placed on the November general election ballot if he gathered signatures before June 1. The opinion is still good guidance.

[Opinion El.Bd. 86-2](#) responded to an inquiry from a representative of a minor political party who wished to circumvent the statutory nomination process to facilitate ballot access for the party's candidates. The opinion is still good guidance.

Recommendation

The staff recommends the Board reaffirm ElBd Chapter 2, Wis. Admin. Code, as rules of the Government Accountability Board. The staff recommends the title of the chapter be changed to "Election-Related Petitions."

The staff recommends the Board reaffirm the two Elections Board formal opinions concerning election-related petitions: [Opinion El.Bd. 76-08](#) and [Opinion El.Bd. 86-2](#).

CHAPTER EIBd 2 NOMINATIONS

EIBd 2.05 Treatment and sufficiency of nomination papers.

(1) Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1". Notwithstanding any other provision of this chapter, the absence of a page number will not invalidate the signatures on that page.

(3) The filing officer shall review all nomination papers filed with it, up to the maximum number permitted, to determine the facial sufficiency of the papers filed. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(5) Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.

(6) Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(7) The filing officer shall accept nomination papers which contain biographical data or campaign advertising. The disclaimer specified in s. [11.30 \(2\)](#), Stats., is not required on any nomination paper.

(8) An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

(9) A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless [sub. \(8\)](#) applies.

(10) The signature of a married woman shall be counted when she uses her husband's first name instead of her own.

(11) Only one signature per person for the same office is valid. Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of as many candidates for the same office as the person is entitled to vote for at the election.

(12) A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.

(13) A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(15) An individual signature on a nomination paper may not be counted when any of the following occur:

(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper.

(b) The signature is dated after the date of certification contained in the certificate of circulator.

(c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.

(d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election.

(e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. [6.03 \(3\)](#), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(16) After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(17) This section is promulgated pursuant to the direction of s. [8.07](#), Stats., and is to be used by election officials in determining the validity of all nomination papers and the signatures on those papers.

EIBd 2.07 Challenges to nomination papers.

(1) The board shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the board under ss. [5.05](#) and [5.06](#), Stats.; and the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local filing officer under s. [8.07](#), Stats. The filing officer shall apply the standards in [s. EIBd 2.05](#) to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under [s. EIBd 2.05 \(3\)](#).

(2)(a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall file both an original and a copy of the challenge at the time of filing the complaint. Notwithstanding any other provision of this chapter, the failure of the complainant to provide the filing officer with a copy of the challenge complaint will not invalidate the challenge complaint. The filing officer shall make arrangements to have a copy of the challenge delivered to the challenged candidate within 24 hours of the filing of the challenge complaint. The filing officer may impose a fee for the cost of photocopying the challenge and for the cost of delivery of the challenge to the respondent. The form of the complaint and its filing shall comply with the requirements of [ch. EIBd 10](#). Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified. After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot, the board or the local filing officer shall decide the challenge with or without a hearing.

(3) (a) The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.

(b) If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted. The burden of proving that the second and subsequent signatures are that of the same person and are invalid is on the challenger.

(c) If a challenger establishes that the date of a signature, or the address of the signer, is not valid, the signature may not be counted.

(d) Challengers are not limited to the categories set forth in [pars. \(a\)](#) and [\(b\)](#).

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.

(5) Where it is alleged that the signer or circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt

to establish the geographical location of an address indicated on a nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

EIBd 2.09 Treatment and sufficiency of election petitions.

(1) Except as expressly provided herein, the standards established in [s. EIBd 2.05](#) for determining the treatment and sufficiency of nomination papers are incorporated by reference into, and are made a part of, this section.

(2) In order to be timely filed, all petitions required to comply with [s. 8.40](#), Stats., and required by statute or other law to be filed by a time certain, shall be in the physical possession of the filing officer not later than the time set by that statute or other law.

(3) All petitions shall contain at least the number of signatures, from the election district in which the petition was circulated, equal to the minimum required by the statute or other law establishing the right to petition.

(4) Only one signature per person for the same petition, is valid.

(5) This section applies to all petitions which are required to comply with [s. 8.40](#), Stats., including recall petitions, and to any other petition whose filing would require a governing body to call a referendum election.

EIBd 2.11 Challenges to election petitions.

(1) Except as expressly provided herein, the standards established in [s. EIBd 2.07](#) for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with [s. 8.40](#), Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.

(2) (a) Any challenge to the sufficiency of a petition required to comply with [s. 8.40](#), Stats., shall be made by verified complaint filed with the appropriate filing officer. The form of the complaint, the filing of the complaint and the legal sufficiency of the complaint shall comply with the requirements of [ch. EIBd 10](#); the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by [ch. EIBd 10](#).

(b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed.

(3) The response to a challenge to a petition shall be filed within the time set by the statute or other law governing that petition or, if no time limit is specifically provided by statute or other law, within 5 days of the filing of the challenge to that petition. After the deadline for filing a response to a challenge, the filing officer shall decide the challenge with or without a hearing.

Formal Opinions Relating to Petitions

Opinion El.Bd. 76-08

Petitions under sec. 9.20, Stats., to place an issue on the general election ballot may be circulated prior to June 1 preceding the election. (Issued to Roney L. Sorenson, April 21, 1976)

Opinion El.Bd. 86-2

Joint Nomination Papers: The Election Board will not accept as valid nomination papers that list on one nomination paper the names of all candidates of the same party seeking state office and will not accept party certifications of the names of person nominated at the party's convention for state office. S.8.15(1) and (3), Stats. (Issued to Dennis Boyer, April 30, 1986)

Applicable Statutes

8.10 Nominations for spring election.

(1) Candidates for office to be filled at the spring election shall be nominated by nomination papers, or by nomination papers and selection at the primary if a primary is held, except as provided for towns and villages under [s. 8.05](#). Unless designated in this section or [s. 8.05](#), the general provisions pertaining to nomination at the September primary apply.

(2)(a) Nomination papers for offices to be filled at the spring election may be circulated no sooner than December 1 preceding the election and may be filed no later than 5 p.m. on the first Tuesday in January preceding the election, or the next day if Tuesday is a holiday, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by the time prescribed in this paragraph, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

(b) Each nomination paper shall have substantially the following words printed at the top: I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), residing at (insert candidate's street address) be placed on the ballot at the (spring or special) election to be held on (date of election) as a candidate so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(c) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(3) The certification of a qualified circulator under [s. 8.15 \(4\) \(a\)](#) shall be appended to each nomination paper. The number of required signatures on nomination papers filed under this section is as follows:

(a) For statewide offices, not less than 2,000 nor more than 4,000 electors.

(am) For court of appeals judges, not less than 1,000 nor more than 2,000 electors.

(b) For judicial offices not specified in [pars. \(a\), \(am\), and \(c\)](#), not less than 200 nor more than 400 electors.

(c) For judicial offices in counties over 500,000 population, not less than 1,000 nor more than 2,000 electors.

(cm) For county executives in counties over 500,000 population, not less than 2,000 nor more than 4,000 electors.

(d) For county executives in counties between 100,000 and 500,000 population, not less than 500 nor more than 1,000 electors.

(e) For county executives in counties under 100,000 population, not less than 200 nor more than 400 electors.

- (f) For supervisors in counties over 500,000 population, not less than 200 nor more than 400 electors.
- (g) For supervisors in counties between 100,000 and 500,000 population, not less than 100 nor more than 200 electors, except as provided in [sub. \(3m\)](#).
- (h) For supervisors in counties under 100,000 population, not less than 20 nor more than 100 electors.
- (hm) For members of the metropolitan sewerage commission in districts over 1,000,000 population, not less than 1,000 nor more than 2,000 electors, in districts over 200,000 but not over 1,000,000 population, not less than 200 nor more than 400 electors, and in districts not over 200,000 population, not less than 100 nor more than 200 electors.
- (i) For city offices in 1st class cities, not less than 1,500 nor more than 3,000 electors for city-wide offices, not less than 200 nor more than 400 electors for alderpersons elected from aldermanic districts and not less than 400 nor more than 800 electors for members of the board of school directors elected from election districts.
- (j) For city offices in 2nd and 3rd class cities, not less than 200 nor more than 400 electors for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.
- (k) For city offices in 4th class cities, not less than 50 nor more than 100 for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.
- (km) For school district officer in any school district which contains territory lying within a 2nd class city, not less than 100 nor more than 200 electors.
- (ks) For school district officer in any school district which does not contain territory lying within a 1st or 2nd class city, if nomination papers are required under [s. 120.06 \(6\) \(a\)](#), not less than 20 nor more than 100 electors.
- (L) For other offices, not less than 20 nor more than 100 electors.

(3m) The county board of any county having a population of at least 100,000 but not more than 500,000 may provide by ordinance that the number of required signatures on nomination papers for the office of county supervisor in the county is not less than 50 nor more than 200 electors. A county that enacts such an ordinance may repeal the ordinance at a later date. Any ordinance changing the number of signatures under this subsection takes effect on November 15 following enactment of the ordinance.

- (4 (a))** All signers on each nomination paper shall reside in the jurisdiction or district which the candidate named on the paper will represent, if elected.
- (b)** Only one signature per person for the same office is valid. In addition to his or her signature, each signer of a nomination paper shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(5) Nomination papers shall be accompanied by a declaration of candidacy under [s. 8.21](#). If a candidate has not filed a registration statement under [s. 11.05](#) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office or municipal judge shall also file a statement of economic interests with the board under [s. 19.43 \(4\)](#) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under [sub. \(2\) \(a\)](#), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under [sub. \(2\) \(a\)](#).

8.15 Nominations for September primary.

(1) Nomination papers may be circulated no sooner than June 1 preceding the general election and may be filed no later than 5 p.m. on the 2nd Tuesday of July preceding the September primary, except as authorized in this subsection. If an incumbent fails to file nomination papers and a declaration of candidacy by 5 p.m. on the 2nd Tuesday of July preceding the September primary, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this subsection. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this subsection for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this subsection. Only those candidates for whom nomination papers containing the necessary signatures acquired within the allotted time and filed before the deadline may have their names appear on the official September primary ballot.

(2) Only one signature per person for the same office is valid. In addition to his or her signature, each signer of a nomination paper shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(3) All signers on each separate nomination paper for all state offices, county offices, and the offices of U.S. senator and representative in congress shall reside in the jurisdiction or district which the candidate named on the paper will represent, if elected.

(4) (a) The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures; he or she knows they are electors of the ward, aldermanic district, municipality or county, as the nomination papers require; he or she knows they signed the paper with full knowledge of its content; he or she knows their respective residences given; he or she knows each signer signed on the date stated opposite his or her name; and, that he or she, the circulator, is a qualified elector of this state, or if not a qualified elector of this state, is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under [s. 6.03](#), Wis. stats.; that he or she intends to support the candidate; and that he or she is aware that falsifying the certification is punishable under [s. 12.13 \(3\) \(a\)](#), Wis. stats. The circulator shall indicate the date that he or she makes the certification next to his or her signature. The certification may be made by the candidate or any qualified circulator.

(b) Nomination papers shall be accompanied by a declaration of candidacy under [s. 8.21](#). If a candidate for state or local office has not filed a registration statement under [s. 11.05](#) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office shall also file a statement of economic interests with the board under [s. 19.43 \(4\)](#) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under [sub. \(1\)](#), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under [sub. \(1\)](#).

5)(a) Each nomination paper shall have substantially the following words printed at the top: I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles) residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate representing the (name of party) so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(b) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(6) The number of required signatures on nomination papers shall be as follows:

(a) For statewide offices, not less than 2,000 nor more than 4,000 electors.

(b) For representatives in congress, not less than 1,000 nor more than 2,000 electors.

(c) For state senators, not less than 400 nor more than 800 electors.

(d) For representatives to the assembly, not less than 200 nor more than 400 electors.

(dm) For district attorneys, not less than 500 nor more than 1,000 electors in prosecutorial units over 100,000 population and not less than 200 nor more than 400 electors in prosecutorial units of 100,000 population or less.

(e) For county offices, not less than 500 nor more than 1,000 electors in counties over 100,000 population and not less than 200 nor more than 400 electors in counties of 100,000 population or less.

(7) A candidate may not run in more than one party primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. An independent candidate at a partisan primary or other election may not file nomination papers as the candidate of a recognized political party for the same office at the same election. A person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election.

(8) Nomination papers shall be filed:

(a) For state offices and the offices of U.S. senator and representative in congress, in the office of the board.

(b) For county offices, in the office of the county clerk or board of election commissioners.

8.20 Nomination of independent candidates.

(1) Independent nominations may be made for any office to be voted for at any general or partisan special election.

(2) **(a)** Nomination is by nomination papers. Each nomination paper shall have substantially the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate [(representing the (name of party)) or (representing the principle(s) of (statement of principles))] so that voters will have the opportunity to vote for (him or her)

for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(b) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(c) In the case of candidates for the offices of president and vice president, the nomination papers shall contain both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principles they represent, if any, in 5 words or less. In the case of candidates for the offices of governor and lieutenant governor, the nomination papers shall contain both candidates' names or the name of a candidate for either office; the office for which each candidate is nominated; the residence and post-office address of each candidate; and the party or principles each candidate represents, if any, in 5 words or less.

(d) Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.

(3) The certification of a qualified circulator under [s. 8.15 \(4\) \(a\)](#) shall be appended to each nomination paper.

(4) The number of required signatures on nomination papers for independent candidates shall be the same as the number specified in [s. 8.15 \(6\)](#). For independent presidential electors intending to vote for the same candidates for president and vice president, the number of required signatures shall be not less than 2,000 nor more than 4,000 electors.

(5) Only one signature per person for the same office is valid. In addition to his or her signature, each signer shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Signers of each nomination paper shall reside in the same jurisdiction or district which the candidate named therein will represent, if elected.

(6) Nomination papers shall be accompanied by a declaration of candidacy under [s. 8.21](#). If a candidate for state or local office has not filed a registration statement under [s. 11.05](#) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office shall also file a statement of economic interests with the board under [s. 19.43 \(4\)](#) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under [sub. \(8\) \(a\)](#), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under [sub. \(8\) \(a\)](#).

(7) Nomination papers shall be filed in the office of the board for all state offices and the offices of U.S. senator and representative in congress, and in the office of county clerk or board of election commissioners for all county offices.

(8) (a) Nomination papers for independent candidates for any office to be voted upon at a general election or September primary and general election, except president, vice president and presidential elector, may be circulated no sooner than June 1 preceding the election and may be filed no later than 5 p.m. on the 2nd Tuesday of July preceding the September

primary, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by 5 p.m. on the 2nd Tuesday of July preceding the September primary, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

(am) Nomination papers for independent candidates for president and vice president, and the presidential electors designated to represent them, may be circulated no sooner than August 1 and may be filed not later than 5 p.m. on the first Tuesday in September.

(b) Nomination papers for independent candidates for any office to be voted upon at a partisan special election shall be circulated and filed as provided in [s. 8.50 \(3\) \(a\)](#).

(9) Persons nominated by nomination papers without a recognized political party designation shall be placed on the official ballot at the general election and at any partisan election to the right or below the recognized political party candidates in their own column or row designated "Independent". At the September primary, persons nominated for state office by nomination papers without a recognized political party designation shall be placed on a separate ballot or, if a consolidated paper ballot under [s. 5.655 \(2\)](#), an electronic voting system or voting machines are used, in a column or row designated "Independent". If the candidate's name already appears under a recognized political party it may not be listed on the independent ballot, column or row.

8.40 Petition requirements.

(1) In addition to any other requirements provided by law, each separate sheet of each petition for an election, including a referendum, shall have on the face at the top in boldface print the word "PETITION". Each signer of such a petition shall affix his or her signature to the petition, accompanied by his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(2) The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each separate sheet of each petition specified in [sub. \(1\)](#), stating that he or she personally circulated the petition and personally obtained each of the signatures; that the circulator knows that they are electors of the jurisdiction or district in which the petition is circulated; that the circulator knows that they signed the paper with full knowledge of its content; that the circulator knows their respective residences given; that the circulator knows that each signer signed on the date stated opposite his or her name; that the circulator is a qualified elector of this state, or if not a qualified elector of this state, that the circulator is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under [s. 6.03](#), Wis. stats.; and that the circulator is aware that falsifying the certification is punishable under [s. 12.13 \(3\) \(a\)](#). The circulator shall indicate the date that he or she makes the certification next to his or her signature.

(3) The board shall, by rule, prescribe standards consistent with this chapter and [s. 9.10 \(2\)](#) to be used by all election officials and governing bodies in determining the validity of petitions for elections and signatures thereon.

9.10 Recall.

(1) Right to recall; petition signatures.

(a) The qualified electors of the state, of any county, city, village, town, of any congressional, legislative, judicial or school district, or of any prosecutorial unit may petition for the recall of any incumbent elective official by filing a petition with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed demanding the recall of the officeholder.

(b) Except as provided in [par. \(c\)](#), a petition for recall of an officer shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.

(c) If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures shall be determined as follows:

1. The area of the district in square miles shall be divided by the area of the municipality in square miles in which it lies.
2. The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by 25% of the quotient determined under [subd. 1.](#) to determine the required number of signatures.
3. If a district is in more than one municipality, the method of determination under [subds. 1.](#) and [2.](#) shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.

(d) The official or agency with whom declarations of candidacy are filed for each office shall determine and certify to any interested person the number of signatures required on a recall petition for that office.

(2) Petition requirements.

(a) Every recall petition shall have on the face at the top in bold print the words "RECALL PETITION". Other requirements as to preparation and form of the petition shall be governed by [s. 8.40.](#)

(b) A recall petition for a city, village, town or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

(c) A petition requesting the recall of each elected officer shall be prepared and filed separately.

(d) No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under [s. 11.05 \(1\)](#) or [\(2\)](#) with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

(e) An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.
2. The signature is dated outside the circulation period.
3. The signature is dated after the date of the certification contained on the petition sheet.
4. The residency of the signer of the petition sheet cannot be determined by the address given.

5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.

6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in [s. 6.03 \(3\)](#).

7. The signer is not a qualified elector by reason of age.

8. The circulator knew or should have known that the signer, for any other reason, was not a qualified elector.

(em) No signature on a petition sheet may be counted if:

1. The circulator fails to sign the certification of circulator.

2. The circulator is not a qualified circulator.

(f) The filing officer or agency shall review a verified challenge to a recall petition if it is made prior to certification.

(g) The burden of proof for any challenge rests with the individual bringing the challenge.

(h) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements.

(i) If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted.

(j) If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.

(k) If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.

(L) If a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted.

(m) No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.

(n) No signature may be stricken if the circulator fails to date the certification of circulator.

(p) If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet.

(q) Challenges are not limited to the categories set forth in [pars. \(i\) to \(L\)](#).

(r) A petitioner may file affidavits or other proof correcting insufficiencies, including but not limited to:

4. Failure of the circulator to sign the certification of circulator.

5. Failure of the circulator to include all necessary information.

(s) No petition for recall of an officer may be offered for filing prior to the expiration of one year after commencement of the term of office for which the officer is elected.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For February 25, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel

SUBJECT: Review of Certain Operating Procedures and Opinions of the State Elections Board relating to Recounts

This memorandum presents certain operating procedures and opinions of the State Elections Board presently in effect relating to recounts to the members of the Government Accountability Board (GAB) for reaffirmation.

The State Elections Board developed a recount manual setting out standard forms and procedures for conducting recounts. The Recount Manual was last updated in February 2007 and is posted on the agency website:

<http://elections.state.wi.us/docview.asp?docid=2307&locid=47>

By law, the Board is required to prescribe standard forms and procedures for conducting recounts:

(10) Standard forms and methods. The government accountability board shall prescribe standard forms and procedures for the making of recounts under this section. The procedures prescribed by the government accountability board shall require the boards of canvassers in recounts involving more than one board of canvassers to consult with the government accountability board staff prior to beginning any recount in order to ensure that uniform procedures are used, to the extent practicable, in such recounts. Section 9.01 (10), Wis. Stats.

The Recount Manual sets out procedures that have been used effectively in state and local recounts for a long period of time. In 2006, the agency conducted 8 recounts of legislative races using the procedures and forms set out in the recount Manual. Before the 2006 fall recounts, the staff set up teleconference calls with the county clerks and candidate representatives to review recount procedures.

It is not unusual for there to be more than 100 recounts following the April Spring election. The Recount Manual is the guide for local boards of canvassers conducting the recount.

State trial and appellate courts have relied on its guidance and cited to the manual when recount determinations are appealed to court. Clifford v. Colby School District, 143 Wis. 2d. 581, 421 N.W. 2d. 852 (Ct. App. 1988). Candidates also utilize the manual to initiate the recount as well as to monitor the conduct of the recount by the board of canvassers.

The Elections Board issued one formal opinion concerning recounts: [Opinion El.Bd. 76-11](#)

Recount; Effect of official's failure to endorse ballot: Statutory provisions for setting aside improperly endorsed ballots on recount are consistent with case law and other statutes. Secs. 9.01(1)(b)3 and 4., Stats. (Issued to Ronald J. DeLain, July 21, 1976)

The statutory provisions discussed in the opinion have changed, so the opinion, while instructive for its analytical approach, does not address issues of current law. The Recount Manual properly delineates the procedures for reconciling ballots as part of the recount canvass process at item 6 on the 12th page of the manual.

Recommendation

The staff recommends the Board reaffirm the recount forms and procedures set out in the Recount Manual at: <http://elections.state.wi.us/docview.asp?docid=2307&locid=47>

The staff recommends the Board decline to reaffirm the Elections Board formal opinion concerning recounts: [Opinion El.Bd. 76-11](#).

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KEVIN J. KENNEDY
Legal Counsel

MEMORANDUM

TO: GOVERNMENT ACCOUNTABILITY BOARD MEMBERS

FROM: GEORGE A. DUNST, STAFF COUNSEL

DATE: FEBRUARY 25, 2008

SUBJECT: DECISION OF THE U.S. SUPREME COURT IN *WISCONSIN
RIGHT TO LIFE V. FEDERAL ELECTION COMMISSION*

Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc (WRTL), No.06-969 and 970; Argued April 25, 2007 and decided June 25, 2007) is the latest chapter in the continuing saga of Congress' (or at least a majority of its members') attempt to reign in corporate (and to a much lesser extent, unions') influence on federal elections. A relatively short summary of previous (dating back to post-War Between the States) attempts to curtail the influence of corporate and union money on federal elections is provided by Justice David Souter in the first part of his dissenting opinion in *WRTL* (at pp.5-16). A shorter history of Congress' more recent attempts to regulate campaign finance expenditures and contributions is provided by Justice Antonin Scalia in his concurring opinion in *WRTL*, (in which he concurs in the result but disagrees with the reasoning. Both histories provide a useful background to the struggle that is being waged in *WRTL*, especially for those who have not followed the travails of "express advocacy" versus "issue advocacy" since the Supreme Court's 1976 decision in *Buckley v. Valeo*, 424 U.S. 1.

BACKGROUND

In the Federal Election Campaign Act of 1971 (FECA), Congress enacted a comprehensive plan for campaign finance regulation. (The FECA was amended in 1974 to address issues and campaign finance abuses that emerged from the Watergate scandal in the 1972 Presidential election.) Among its provisions, the FECA established limits on contributions and expenditures by candidates, by other individuals, and by political committees. And to deter circumvention of the contribution limits, the Act set limits on what were called coordinated expenditures – expenditures that were made in consultation, cooperation or in concert with, or at the request or suggestion of, the candidate (or his/her committee) supported by the expenditure, and that were, in effect, contributions to the candidate disguised as expenditures.

The Act also established a system of disclosure of campaign finance activity through mandatory registration and reporting by candidates, (and other individuals), and by committees if that activity crossed legislatively determined thresholds. The Act also had other provisions regarding the Federal Election Commission, the federal agency that would implement and administer the regulatory system, and regarding voluntary public financing of campaigns for the office of President of the United States.

Congress' new legislation was almost immediately challenged by a consortium of individuals and associations whose political activity was likely to be substantially impacted by the 1971/74 FECA. That challenge culminated in the landmark U.S. Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 (1976).

The *Buckley* decision was a thorough review of all the provisions of the FECA. The portions of the decision that relate to the issue of “express advocacy” (with which the Board may become involved) and that relate to both of the later Supreme Court decisions in *McConnell v. Federal Election Commission*, 540 U.S. ___ (2003) and *Wisconsin Right to Life v. Federal Election Commission*, 551 U.S. ___ (2007) was the narrowing of the term expenditure (or prohibited expenditure). To avoid 1st Amendment vagueness and overbreadth concerns that existed in the statutory language “influencing an election,” “in connection with an election” and “relative to a clearly identified candidate,” the court established the standard now commonly referred to as “express advocacy.” “Express advocacy” was speech (or the expenditures to pay for that speech) made for the purpose of “expressly advocating the election or defeat of a clearly identified candidate.”¹

What the *Buckley* Court said was that to pass constitutional muster under the 1st Amendment’s protection of political speech, regulation of that speech is limited to express advocacy of a clearly identified candidate. The coda recognized by the Court was that political speech was at the core of the freedom protected by the 1st Amendment and, therefore, was entitled to the highest protection afforded by the U.S. Constitution. Consequently, regulation of that speech was subject to strict or exacting scrutiny. That meant that restrictions on such speech had to be justified by a compelling state interest in regulating that speech and those restrictions had to be narrowly drawn to achieve that state interest. The *Buckley* Court found that compelling state interest in the prevention or avoidance of corruption and the avoidance of the appearance of corruption. The corruption to which the Court referred was described as the *quid pro quo* that is seen in the exchange of political favors or influence by an officeholder in return for money (in this case, in the form of a campaign contribution).

The court relied upon this compelling interest in avoiding corruption to uphold contribution limits but it found that there was not a sufficiently compelling interest to justify limits on expenditures (too remote in the *quid pro quo* equation). But the court did uphold the mandatory disclosure requirements applicable to those expenditures if they had been made for the purpose of expressly advocating the election or defeat of a clearly identified candidate, i.e, for the purpose of “express advocacy.”

Expenditures² for political communications that did not expressly advocate the election or defeat of a clearly identified candidate were outside the disclosure requirements – notwithstanding that those communications contained a message that was critical or supportive of a clearly identified candidate. Such speech and the expenditures to pay for it were outside the regulatory equation. That speech came to be known as “issue advocacy,” notwithstanding that the speech was not necessarily limited to discussion of issues and may well have included reference to, or even substantial discussion of, candidates.

Included in the court’s discussion and recognition that under its 1st Amendment jurisprudence political speech was entitled to the highest protection, and that regulation of such speech was subject to strict or exacting scrutiny, is the principle that any test delineating regulated speech from unregulated speech had to draw a “bright line” between the two, to enable the speaker to be able to distinguish what was permissible from what was not and to enable the speaker to comport his conduct or political activity accordingly.

In the 25 plus years that followed the *Buckley* decision no other portion of the decision generated as much controversy (or litigation) as the Court’s attempt to establish a bright line between regulated speech or activity

¹ To illustrate what it meant, or had in mind, by the term “expressly advocate,” the court added a footnote (the now famous or infamous Footnote 52) in which it listed eight terms that would constitute terms of express advocacy: “elect,” “support,” “defeat,” “vote for,” “vote against,” “cast your ballot for,” “Smith for Congress,” and “reject.”

² Assuming the expenditures had not been coordinated with the candidate or her campaign – a separate issue for a different time and place.

and unregulated activity through the application of the term or classification: “express advocacy.”³ The lower federal courts have been plagued with serial challenges to the meaning and application of the term. The FEC attempted a series of regulations that met with little success in federal court in clarifying exactly what was “express advocacy” and what was not.

Essentially, the critical battle that was fought in the circuits was the extent to which the regulatory community could use the “context” in which political speech had been used to show that the real purpose of the speech had been to advocate a clearly identified candidate’s election or defeat, notwithstanding the absence of the so-called “magic words” in that speech. “Context” was necessary to show the express purpose of the speech because a practice – of avoiding the use of any of the terms in Footnote 52 of the *Buckley* decision, or their verbal equivalents - had clearly evolved in the political community in their political communications regarding clearly identified candidates. Regardless of the absence of the “magic words” of Footnote 52 in candidate-related communications, the regulatory community wanted to be able to show that the clear purpose of a communication was to advocate election or defeat. (The clear identification of a candidate was almost never in dispute.)

One Circuit Court – the Ninth, in *Furgatch v. The Federal Election Commission*, 807 F.2d 857 (1987) – lent encouragement to the government’s struggle to get out from under the circumscription of the “magic words” or their verbal equivalents by the use of “context” to demonstrate “express advocacy.” In holding that an advertisement that urged voters: “Don’t let him do it!” in reference to the re-election of President Jimmy Carter in the 1980 Presidential election, the court said:

*We conclude that context is relevant to a determination of express advocacy. A consideration of the context in which speech is [*864] uttered may clarify ideas that are not perfectly articulated, or supply necessary premises that are unexpressed but widely understood by readers or viewers. We should not ignore external factors that contribute to a complete understanding of speech, especially when they are factors that the audience must consider in evaluating the words before it. However, context cannot supply a meaning that is incompatible with, or simply unrelated to, the clear import of the words.*

*VI. With these principles in mind, we propose a standard for "express advocacy" that will preserve the efficacy of the Act without treading upon the freedom of political expression. We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable [**20] interpretation but as an exhortation to vote for or against a specific candidate. This standard can be broken into three main components. First, even if it is not presented in the clearest, most explicit language, speech is "express" for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning.*

*Second, speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. We emphasize that if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. This is necessary and sufficient to prevent a chill on forms of speech other than the campaign advertising regulated by the Act. Under this standard, the court is not forced to ignore the plain meaning of campaign-related speech in a [**21] search for certain fixed indicators of "express advocacy."*

VII. Applying this standard to Furgatch's advertisement, we reject the district court's ruling that it does not expressly advocate the defeat of Jimmy Carter. We have no doubt that the ad asks the public to vote against Carter. It cannot be read in the way that Furgatch suggests. . . .

(Furgatch at p. 865. Emphasis supplied)

³ Although debate and litigation over the prohibition on spending limits and over the interpretation of the term “coordinated expenditures” would be a close second.

The Furgatch concept of using “context” to demonstrate “express advocacy” was not adopted by any other circuit or by the Supreme Court. The Supreme Court did not retreat from the basic distinction it had drawn, in *Buckley*, between “express advocacy” and its counterpart, “issue advocacy” (although the latter term was not used in *Buckley*), in the numerous decisions, involving the issue of political speech, that followed *Buckley*.

In Congress, however, the debate over unregulated political activity, and the failure of the “express advocacy” test to slow the steady stream of unregulated corporate and union money into the political marketplace, with both sources using that very test as a shield from disclosure, had heated up. After numerous attempts, Senators McCain and Feingold, along with others who introduced campaign finance reform legislation that sought to amend FECA, were successful with the passage of the Bipartisan Campaign Reform Act of 2002 that changed the landscape of regulated political speech. A key provision of that legislation was sec.203, amending sec.434(f)(3)(A) of the FECA to define the new term “electioneering communication”⁴:

Subparagraph (A) provides:

- (i) *The term ‘electioneering communication’ means any broadcast, cable, or satellite communication which –*
 - (I) *refers to a clearly identified candidate for federal office;*
 - (II) *is made within –*
 - (aa) *60 days before a general, special or runoff election for the office sought by the candidate; or*
 - (bb) *30 days before a primary or preference election or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and*
 - (III) *in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.” 2 U.S.C. s.434(f)(3)(A) (2000 ed. Supp.IV)*

Subsection (C) defines the term “targeted to the relevant electorate.”

What BCRA had done, in expanding the scope of regulated political speech to broadcast, cable or satellite communications during the 30-day and 60-day “blackout” periods, was to define regulated political speech in terms of the “context” in which the communication was made rather than in terms of the content of the communication. The communication did have to clearly identify a candidate, but they nearly always did any way or there would be little point in considering them campaign speech. Other than naming a candidate their content was irrelevant to the classification, “electioneering communication.” What mattered was whether they were broadcast (or cable or satellite) communications⁵ disseminated within 30 days of a primary and/or 60 days of a general election.

BCRA was immediately challenged, in *McConnell v.FEC*, supra, by another consortium of individuals and associations whose political activity was likely to be impacted by the various provisions of the new legislation, and especially by the prohibition on the use of corporate and union funds to pay for “electioneering communications.” In *McConnell*, the Supreme Court upheld most of BCRA, including the “electioneering communications” provisions, without overruling *Buckley*. The Court did not have to overrule *Buckley* because it ruled that its “decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.”⁶

⁴ This was in conjunction with 2 U.S.C. 441b(b)(2) which prohibits a labor organization or corporation from using general treasury funds to pay for an “electioneering communication.”

⁵ The new classification did not apply to communication by print media which, presumably, is still subject to the “express advocacy” rule, as is any communication outside the 30-day and 60-day windows, because the supreme Court has not overturned *Buckley* or the “express advocacy” rule..

⁶ In *McConnell*, . . . *We rejected any suggestion “that Buckley drew a constitutionally mandated line between Express advocacy [with magic words] and so-called issue advocacy [without them] and that speakers possess an inviolable First Amendment right to engage in the latter category of speech.” Id at 190. to the contrary, we held that “our decisions in Buckley and MCFL were specific to the*

What the *McConnell* Court (or the majority consisting of Justices Ginsburg, Souter, Breyer Stevens and, in what appears to have been the “swing vote,” Justice Kennedy), had done was accept the argument that political advertisements or communications that named or clearly identified a candidate during the 30 days before a primary or 60 days before a general election were the “functional equivalent” of “express advocacy” and, therefore, could be regulated just as “express advocacy” was (and is). The majority seems to have been impressed or persuaded by the evidence marshaled by the government⁷ that appeared to show that most of the communications in previous elections that would have fallen into the category of “electioneering communications” had, at least, as a principal purpose the election or defeat of the candidate identified. That evidence also appeared to show that virtually none of those communications used so-called “magic words” or their verbal equivalents, notwithstanding the ads’ proximity to the election and notwithstanding their naming of a candidate seeking office at that election. The evidence seemed to lend credence to the conclusion that communications that would have fallen into this category of “electioneering communications” did have as their intent and effect, “electioneering.”

The *McConnell* Court acknowledged that sec.203 and its definition of “electioneering communications” could include within its net “pure or genuine” issue ads that did not have an electioneering intent or effect, but the Court held open the possibility that those aggrieved by that effect may be able to challenge the constitutionality of the law if they could show that: “BCRA’s application to pure issue ads is substantial ‘not only in an absolute sense but also relative to the scope of the law’s plainly legitimate applications . . . to election-related advertising.’” (*McConnell* at p.101.) This language became the basis for WRTL’s subsequent as-applied challenge to BCRA sec.203 in *WRTL I*.)

Further central to the Court’s upholding of BCRA sec.203 was its finding (at p.97) that “The ability to form and administer separate segregated funds authorized by FECA . . . has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this court’s unanimous view and it is not challenged in this litigation.” (*McConnell* at p.97) According to the Court, what BCRA had done was extend FECA’s prohibition on the use of general treasury funds for “express advocacy” to “electioneering communications,” but those organizations “remained free to organize and administer separate, segregated funds, or PAC’s, for that purpose. Because corporations can still fund electioneering communications with PAC money, it is “simply wrong” to view the provision as a “complete ban” on expression, rather than as a regulation.” (*McConnell* at pp.97-98)

Finally, the *McConnell* decision appears to have recognized a newer compelling state interest that had only been implied before (in *Austin v. Michigan Chamber of Commerce* 494 U.S. 652, 660 (1990): “We have repeatedly sustained legislation aimed at ‘the corrosive and distorting effects of immense aggregations of wealth that are aggregated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.’” (*McConnell* at p.99 quoting *Austin* at p.660)

Not long after the *McConnell* decision, BCRA sec.203, and the decision itself came under challenge in two cases, (*WRTL I and II*) from an organization, Wisconsin Right to Life that wanted to go public with communications that named candidates but were intended to lobby rather than affect an election.

statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech. *Id* at 192-193. (See the dissent written by Justice Souter in *WRTL v. FEC*, supra.

⁷ Referring to “Studies in the [*McConnell*] record analyzing ads broadcast during the blackout period [that] had classified the ads in terms of intent and effect.” See Justice Roberts’ opinion in *WRTL* at pp.12-13.

The circumstances in the two *WRTL* decisions are as follows: WRTL is a private, non-profit, non-stock, ideological advocacy incorporated association organized to advocate and lobby on behalf of pro-life issues and legislation to address those issues. In July of 2004, it paid for the broadcasting of a series of radio advertisements titled “Wedding,” “Loan” and “Waiting.” The text of the messages was different, but the import was the same: to express the association’s dismay and frustration with the efforts of a group of U.S. Senators to block the appointment of a number of nominees (by President George W. Bush) to federal judgeships. Two of the senators who were being held accountable in those communications for the filibuster tactic were Wisconsin Senators Russell Feingold and Herb Kohl. Listeners were told to contact Senators Feingold and Kohl and urge them to oppose the filibuster.

Because WRTL planned to run its messages within 30 days of the 2004 Wisconsin September primary, and knowing that the timing of such broadcasts would contravene sec. 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), administered by the Federal Election Commission (*FEC*), WRTL brought suit against the *FEC*, seeking declaratory and injunctive relief. “WRTL alleged that BCRA’s prohibition on the use of corporate treasury funds for “electioneering communications as defined in the Act [*BCRA*] is unconstitutional as applied to “Wedding,” Loan,” and “Waiting,” as well as to any materially similar ads it might seek to run in the future.” (*WRTL* at p.6)

Before WRTL could run its ads, the District Court denied the preliminary injunction on the ground that the U.S. Supreme Court’s decision in *McConnell v. Federal Election Comm’n*, 540 U.S. 93 (2003) did not allow for the kind of as-applied challenge being brought by WRTL. WRTL did not run its ads during the blackout period, but appealed the District Court’s decision to the U.S. Supreme Court. On appeal, the U.S. Supreme Court, in *WRTL I*, “vacated the District Court’s judgment. . . . and remanded for the District Court to consider the merits of WRTL’s as-applied challenge in the first instance.” (at p.6) The majority in *WRTL I* found that *McConnell* had rejected a facial challenge to BCRA and sec.203, but had left open the door to the as-applied challenge that is the present case: *WRTL II*.

On remand, “the District Court granted summary judgment for WRTL, holding BCRA, sec.203 unconstitutional as applied to the three advertisements WRTL planned to run during the 2004 blackout period.” (at pp.6-7) Although Congress could and did proscribe the use of corporate expenditures for “express advocacy” and the “functional equivalent” of “express advocacy,” “the District Court concluded that WRTL’s ads were not express advocacy or its functional equivalent, but were instead “genuine issue ads.”

In rejecting the respondent *FEC*’s mootness argument, (applying the exception to mootness for “disputes capable of repetition, yet evading review”), the Court held that “there exists a reasonable expectation that the same controversy involving the same party will recur.” (at p.10)

Turning to the merits of WRTL’s challenge to BCRA sec.203, as applied to WRTL’s three ads, the Court recognized that the “line between campaign advocacy and issue advocacy may dissolve in practical application, but also recognized that it, nevertheless, had to draw that line where “the interests held to justify regulation of campaign speech and its “functional equivalent” might not apply to issue advocacy. The Court then concluded that the speech in question was neither “express advocacy,” or its functional equivalent and therefore could only be regulated if the state could show a compelling interest to justify that regulation. Finding no such interest, the Court held that BCRA sec.203 is unconstitutional as applied to the advertisements at issue in this case. (*WRTL* at p.3).

ISSUE

Whether section 203 of the Bipartisan Campaign reform Act of 2002, as applied to the radio advertisements, (“Wedding,” Loan,” and “Waiting”), by Wisconsin Right To Life, is consistent with the First Amendment;

i.e., whether WRTL's radio ads are the functional equivalent of express advocacy or whether there is another compelling state interest justifying s.203's prohibition on the use of corporate money for those ads.

STATUTE

According to the majority opinion: the principal legislation at issue in *WRTL*, BCRA Section 203, amended 2 U.S.C. 441b(b)(2) "to make it a crime for any labor union or incorporated entity to use its general treasury funds to pay for any "electioneering communication." BCRA's definition of "electioneering communication" is below.

2 U.S.C. 434(f)(3)(A):

- (i) The term "electioneering communication" means any broadcast, cable, or satellite communication which –
 - (I) refers to a clearly identified candidate for Federal office;
 - (II) is made within –
 - (aa) 60 days before a general, special or runoff election for the office sought by the candidate; or
 - (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the; and
 - (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

DISCUSSION

That the ads in question are prohibited by BCRA s.203 is not in dispute. The question is whether BCRA can constitutionally prohibit WRTL from running them.

1. Unlike in *McConnell*, where the Court referred to BCRA's challengers' "heavy burden of proving that amended FECA 316(b)(2) is overbroad, Justice Roberts wrote that: "Because s.203 burdens political speech, it is subject to strict scrutiny which means that the government, not the speaker, (WRTL), has to prove that applying BCRA to WRTL's ads furthers a compelling interest and is narrowly tailored to achieve that interest."
2. *McConnell* has established that BCRA survives strict scrutiny to the extent it regulates "express advocacy" or its functional equivalent. Consequently, if the government can show that WRTL's ads are "express advocacy" or its functional equivalent, *McConnell* holds that BCRA may constitutionally regulate them; If it cannot make such a showing, the government has to show justification by some other compelling state interest.
3. The court found that the ads are neither "express advocacy" nor its "functional equivalent."

(a.) The contention by the appellants "that *McConnell* established the constitutional test for determining if a communication is the functional equivalent of express advocacy and that constitutional test is whether the communication is intended to influence elections and has that effect" is rejected by the Court. The *McConnell* decision was predicated on the factual record before it rather than on "adopting a particular test for determining what constituted the "functional equivalent" of express advocacy." The factual record before the Court was based on an "intent and effect" analysis by the persons performing a study report; but that did not mean that the Court was adopting an "intent and effect" test as its test for determining what constituted the "functional equivalent" of express advocacy. And the Court has never claimed to have adopted that test.

The Court has already rejected an “intent and effect“ test for distinguishing between discussions of issues and candidates in *Buckley v. Valeo*, and *McConnell* did not purport to overrule *Buckley* on this subject. Such a test would have the effect of chilling more speech than it protected by offering the threat of a trial on every communication that fell within the terms of s.203 - in an attempt to measure the speaker’s “intent” or to measure the understanding of the communication’s listeners.

(b.) The court then articulated the criteria for establishing a standard to determine the functional equivalent of express advocacy and followed with a statement of what that standard is:

*To safeguard [***39] this liberty, [the freedom to speak on public issues without the fear of reprisal] the proper standard for an as-applied challenge to BCRA § 203 must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect. See Buckley, supra, at 43-44, 96 S. Ct. 612, 46 L. Ed. 2d 659. It must entail minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation. See Virginia v. Hicks, 539 U.S. 113, 119, 123 S. Ct. 2191, 156 L. Ed. 2d 148 (2003). And it must eschew "the open-ended rough-and-tumble of factors," which "invites complex argument in a trial court and a virtually inevitable appeal." Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 547, [*2667] 115 S. Ct. 1043, 130 L. Ed. 2d 1024 (1995). In short, it must give the benefit of any doubt to protecting rather than stifling speech. See New York Times Co. v. Sullivan, supra, at 269-270, 84 S. Ct. 710, 11 L. Ed. 2d 686.*

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's three ads are plainly not [40] the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.***

(WRTL at p.16; Emphasis supplied)

(c.) The Court added to its holding that contextual factors will not play a significant role in determining whether a communication is a functional equivalent of “express advocacy.” Considerations of context only show what has been acknowledged by the courts since *Buckley*: “that the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.” (WRTL at p.20 quoting *Buckley* at p.42)

(4.) No other state interest is sufficiently compelling to justify regulating ads, like WRTL’s, that are neither “express advocacy” nor the functional equivalent of “express advocacy.” None of the arguments for extending the regulation of “express advocacy” and its functional equivalents to communications that were neither was found to be persuasive. The avoidance of corruption has arguably been used to extend the regulation of “express advocacy” to the functional equivalent of “express advocacy.”

But to justify regulation of WRTL’s ads, this interest [the avoidance of corruption or the appearance of corruption] must be stretched yet another step to ads that are NOT the functional equivalent of express advocacy. Enough is enough. Issue ads like WRTL’s are by no means equivalent to contributions, and the quid-pro-quo corruption interest cannot justify regulating them. To equate WRTL’s ads with contributions is to ignore their value as political speech. (WRTL at p.25)

Nor is prevention of the circumvention of contribution limits a justification for regulation of communications that are neither, “express advocacy” or its functional equivalent. “Government may not suppress lawful speech as a means to suppress unlawful speech.” (WRTL at p.26 quoting *Buckley* at p.44) “The desire for a bright line

rule . . . hardly constitutes the *compelling* state interest necessary to justify any infringement on First Amendment freedom.” (WRTL at p.26 quoting *Massachusetts Citizens for Life* 479 U.S. at 263)

Finally, the majority found that the interest in regulating the corrosive and distorting influence on elections of the vast aggregations of wealth in corporations and unions – that had been suggested as a compelling state interest in *Austin* and *McConnell* – does not justify regulating communications like WRTL’s that are neither “express advocacy” nor its functional equivalent.

We hold that the interest recognized in Austin as justifying regulation of corporate campaign speech and extended in McConnell to the functional equivalent of such speech has no application to issue advocacy of the sort engaged in by WRTL.

Because WRTL’s ads are not express advocacy or its functional equivalent and because appellants identify no interest sufficiently compelling to justify burdening WRTL’s speech, we hold that BCRA sec.203 is unconstitutional as applied to WRTL’s “Wedding,” “Loan,” and “Waiting” ads.

(WRTL at p. 28)

The greatest insight into Justice Roberts’ opinion may be found in his Footnote 7, in response to Justice Scalia’s criticism of the vagueness of Justice Robert’s standard for determining the functional equivalent of “express advocacy”:

Justice Scalia thinks our test impermissibly vague. . . . As should be evident, we agree with Justice Scalia on the imperative for clarity in this area; that is why our test affords protection unless an ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. It is why we emphasize that (1) there can be no free-ranging intent-and-effect test; (2) there generally should be no discovery or inquiry into the sort of “contextual” factors highlighted by the FEC and intervenors; (3) discussion of issues cannot be banned merely because the issues might be relevant to an election; and (4) in a debatable case, the tie is resolved in favor of protecting speech. And keep in mind that this test is only triggered if the speech meets the brightline requirements of BCRA sec.203 in the first place. . . .

(WRTL at p.21)

CONCLUSION:

While not contesting McConnell’s finding that the term “express advocacy” had become functionally meaningless - because it was steadfastly being avoided while the level of issue advocacy was increasing exponentially at the same time - the majority was not convinced that any political ad during the 30/60-day “blackout” period of BCRA was the functional equivalent of “express advocacy” merely because the ad named or clearly identified a candidate running for election. Without a supervening standard like the one articulated by Justice Roberts, pure or genuine issue ads like those of WRTL would be swept along with real “electioneering communications” - having the effect of hanging a few innocent people in order to hang a few more guilty ones. The interest in regulating “express advocacy” and even its functional equivalent does not justify that effect. To the majority, where the 1st Amendment is implicated, the tie between regulation and free speech goes to the speaker, not to the censor.

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Judge David Deininger
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: February 19, 2008

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Nathaniel E. Robinson, Administrator
Elections Division

SUBJECT: Elections Division Activities

Elections Administration Update

Introduction

The Elections Division's efforts to make sure that our partners, customers, constituents and the general public are all well prepared for a trouble-free February 19 Presidential Preference Primary, continued since the January 28, 2008, Government Accountability Board (GAB) Meeting. During your February 25 meeting, we will give you an update on our perspective on how well the February 19 Presidential Preference Primary went.

As part of our February 19 preparation, we met twice with the GAB Accessibility Advisors to address accessibility issues raised in the Legislative Audit Bureau's (LAB) November 2007, Report. Priority attention was and continues to be given to making sure that all of our 2822 polling places are free and accessible to all voters, especially for the elderly and disabled. Our statewide accessibility survey was revised and pre-tested on February 19 by 14 staff members who went onsite and monitored the 20 municipalities, 36 polling places cited by the LAB as having barriers to easy and free access to polling sites. Additionally, we applied for \$201,727 Section 261 Help America Vote Act (HAVA) funds to help advance access for individuals with disabilities.

Our Statewide Voter Registration System (SVRS) provided invaluable support to clerks and their support staff in preparing for the February 19 Presidential Preference Primary. For example, a majority of time has been spent supporting county and municipal clerks as they prepare to run their poll books out of the SVRS for the February 2008 Presidential Preference and Spring Primary. Statewide, there were 3,825 poll books printed for this election event. Elections Specialists have also spent time supporting the clerks who are using the SVRS to track absentee ballot activity for the February election.

On Monday, February 18, Accenture joined two GAB temporary computer consultants, for the final closeout of transitional activities; thus, fulfilling the GAB-Accenture negotiated

agreement which ends on Thursday, February 28, 2008. A fuller update on the SVRS appears elsewhere in this report.

Key Metrics

1. Post February 19_Presidential Preference Primary Work

Statute requires each county to send a canvass of the votes cast in the county for the office of President no later than February 26th. Five counties are conducting primaries for the office of Circuit Court Judge in addition to the Presidential Preference Vote and will include the votes cast for those offices in their canvasses. GAB staff will review each county's canvass for completeness and accuracy, enter the votes cast into a database, print reports for each office, and proof each printed report against the original county canvass. Upon completion of the State Canvass, the Chair of the GAB or designee, will certify the results of the primary by signing a Statement of Canvass prepared by GAB staff.

2. Training (Preparation for the 2008 Presidential Preference Primary, and the Spring and September Primaries, and the Fall General Election)

Staff members have been busy supporting the GAB training classes, SVRS application testing and providing back up to the Help Desk staff. They finalized materials created for the new Special Registration Deputy training. An Elections Specialist continues to be onsite in the City of Milwaukee and two SVRS Trainers have been onsite in the City of Madison supporting their tracking of absentee ballot requests in the SVRS.

On February 20, 2008, a new Web-Based Election Training System (WBETS) will go live. The WBETS is an eLearning website where SVRS users can take on-line training courses, download manuals, print step-by-step instructions for common tasks, watch how-to video demonstrations, and put their knowledge into practice with interactive SVRS simulations.

WBETS was developed over the past year through close collaboration among GAB staff, municipal and county clerks, and the University of Wisconsin-Extension Division of Continuing Education, Outreach & E-Learning. This partnership has produced a website with several features designed to help Wisconsin's clerk community carry the ever-increasing burden of elections management responsibilities.

A summary of GAB's training initiatives since January 2007 through February 16, 2008, is found in **Attachment #1**.

3. Public Information/Education

Training, technical assistance and public information/education initiatives are the foundation of our efforts to ensure that our customers, constituents and partners are well prepared to assist us to carry out our statutory elections administration responsibilities. A well-informed public assures greater participation by electors in the democratic process. A summary of our public information/education initiatives

intended to contribute to a problem free 2008 elections season, will be shared with you during February 25 GAB meeting in a document to be titled, **Attachment #2**

Noteworthy Activities

1. Prepared our partners, customers, constituents and the general public for a trouble-free February 19 Presidential Preference Primary.
2. Communicated with 1851 County and Municipal Clerks about the law regarding accessibility to Wisconsin's 2822 Polling Sites.
3. Contacted the 20 municipalities listed in the Audit Report and requested information on what is being done to correct deficiencies noted by the Audit Bureau in 36 polling places. Responses are due prior to the February 19 Presidential Preference Primary. Using a revised draft accessibility survey, 14 staff persons were assigned to go onsite to monitor and verify what if any corrective action had been taken to remove any and all barriers to full and free accessibility.
4. Applied for \$201,727 Section 261 Help America Vote Act (HAVA) funds to help advance access for individuals with disabilities, and in the process of recruiting a Limited Term Employee (LTE) whose priority will be to address our short and long terms accessibility objectives. Conferred with our GAB Accessibility Advisors three times.
5. On February 20, 2008, launched a new Web-Based Election Training System (WBETS), an eLearning website where SVRS users can take on-line training courses, download manuals, print step-by-step instructions for common tasks, watch how-to video demonstrations, and put their knowledge into practice with interactive SVRS simulations.

30-day Forecast

1. In accordance with the applicable statutes, requires each county to send a canvass of the votes cast in the county for the office of President no later than February 26.
2. Debrief on the February 19 Presidential Preference Primary – what went right, challenges, glitches, surprises, areas of needed improvement, etc.
3. Continue to meet with the GAB Accessibility Advisors and finalize the draft accessibility survey and distribute.
4. Continue to address the all findings in the Audit Report and prepare to present to the Legislature's Joint Committee on Audit on/or before March 31, 2008.
5. Draft supplemental information to access an additional \$211,219 Help America Vote Act (HAVA), under Section 251, Requirements Payments, and convene a meeting with our Election Administration Council to get input on expending these funds that are made available to states to meet HAVA requirements including upgrading voting machines and voter registration databases.
6. Prepare an application for a \$2 million competitive grant to develop a model program to improve the collection, analyses and distributions of election data for Federal offices. Such data will also be provided to the Election Assistance Commission.
7. Address Mr. Paul Malischke's recommendations made to GAB on January 28, 2008:

- A. Ballots (Availability/Shortages/Security/Training): Information is being gathered and advice will be sought from a small group of county and municipal clerks.
- B. Voter ID/Training of Poll Workers: This matter is addressed in **Attachment #3**.
- C. Formula for Allocating Funds to Improve Polling Place Accessibility: This is a matter that should and will be addressed by our GAB Accessibility Advisors.

Statewide Voter Registration System Update

Barbara A. Hansen, SVRS Project Director

Introduction

Within the Statewide Voter Registration System (SVRS) Project, there are several different team activities. There are activities surrounding the support of municipal and county clerks throughout the state as they administer the elections using SVRS and there are activities surrounding the technical aspects of supporting a statewide voter registration system.

This report describes the SVRS Team activities with respect to clerk support including topics regarding Clerk Election Support and Staffing. It also describes those SVRS Team activities with respect to the functional technical support of the application including topics regarding SVRS Data, GAB Help Desk, Accenture Application and HAVA Interfaces and Technical Staffing.

Milestones/Key Measurements

1. Ineligible Voter Lists and 2007 Wisconsin Deaths Lists

The Ineligible Voter List contains all felons who are currently under the Department of Correction's (DOC) supervision. These individuals are on probation, parole, or extended supervision. The voting rights of these individuals have not been restored and will not be restored until the individual completes the terms of his or her sentence. The information is provided by the DOC. The 2007 Wisconsin Deaths document contains death date provided by the Department of Health and Family Services, Vital Records Office.

These lists were provided to 1,851 municipal and 72 county clerks to assist in identifying persons who are ineligible to vote under Wisconsin state statutes. The clerks use the lists to maintain current registration records. The Ineligible Voter List is also used during the late registration process and when issuing absentee ballots in the clerk's office. Poll workers also use the Ineligible Voter List when registering voters at the polling place on Election Day. These lists were prepared and distributed by January 25 with the assistance of the Department of Administration/Division of Enterprise Technology.

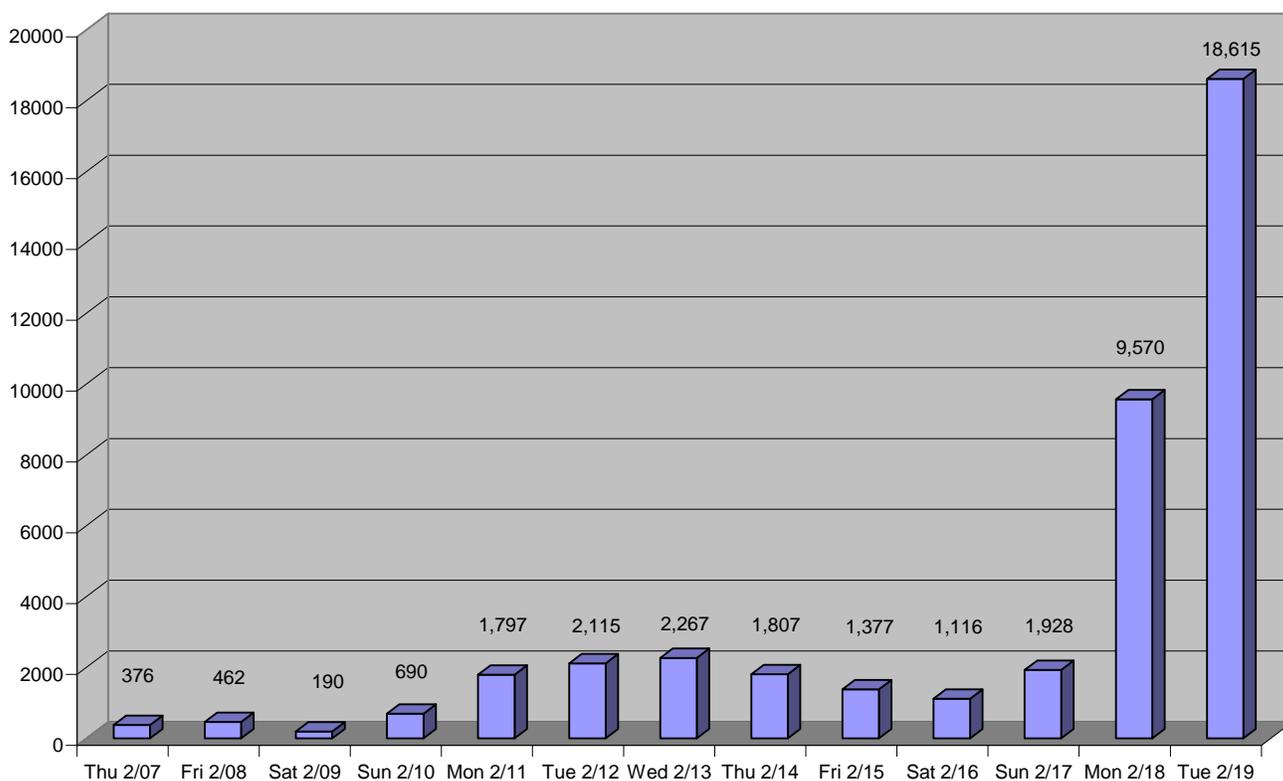
2. SVRS Application

Updates to the SVRS application have been delivered by Accenture. Testing started in January and continues through February 2008.

3. Voter Public Access Goes "Live"

On Thursday, February 7, 2008, the Government Accountability Board staff announced that voters can look up their polling place and other election-related information on the Internet using a new function of the state's voter registration system. Voter Public Access (VPA) gives the public a new means of getting information about voter registration, voting history, normal polling place locations, current office holders, and sample ballots for upcoming elections. The information provided comes directly from the SVRS and is maintained by local clerks. In rare cases, a voter may vote on a provisional ballot, and the VPA page will also allow that voter to check the status of her/his provisional ballot provided the clerk enters the information into SVRS. The following graph depicts the recent usage of the website.

VPA Sessions



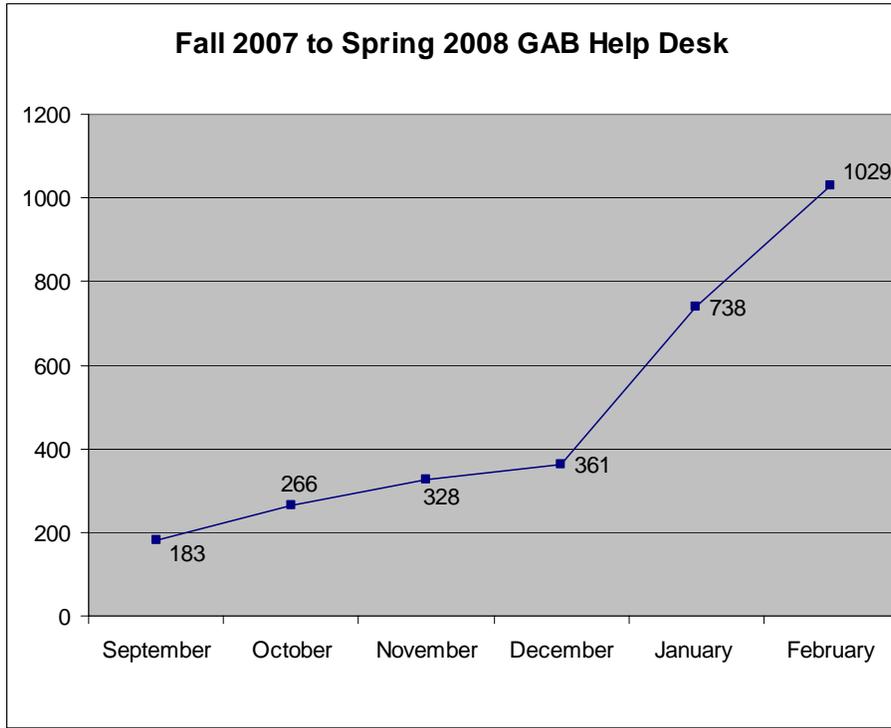
Special Note: On Monday, February 18, 2008, the VPA site received 9,570 hits. On Tuesday, February 19, day of Wisconsin's Presidential Preference Primary, the VPA site received **18,615** hits.

4. Staff Hiring Process

We are in the process of recruiting staff to provide support to clerks, to transition from Accenture maintenance support, and to support the SVRS application.

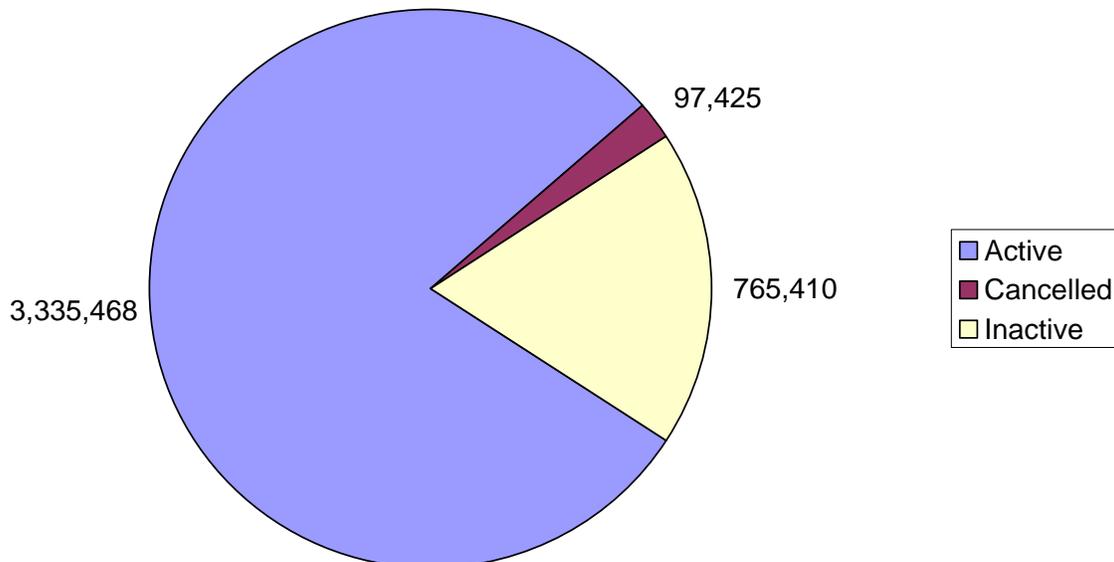
5. GAB Help Desk

The GAB Help Desk had extended hours the day before, during Primary Election Day and the day after in order to field all calls coming into the Elections Division of GAB. The graph below illustrates the call volume to the GAB Help Desk leading up to the 2008 Presidential Preference and Spring Primary. The last number is for the 30 days prior to February 18, 2008.



6. Voter Data from SVRS as of February 18, 2008

Voter Registration Statistics by Status



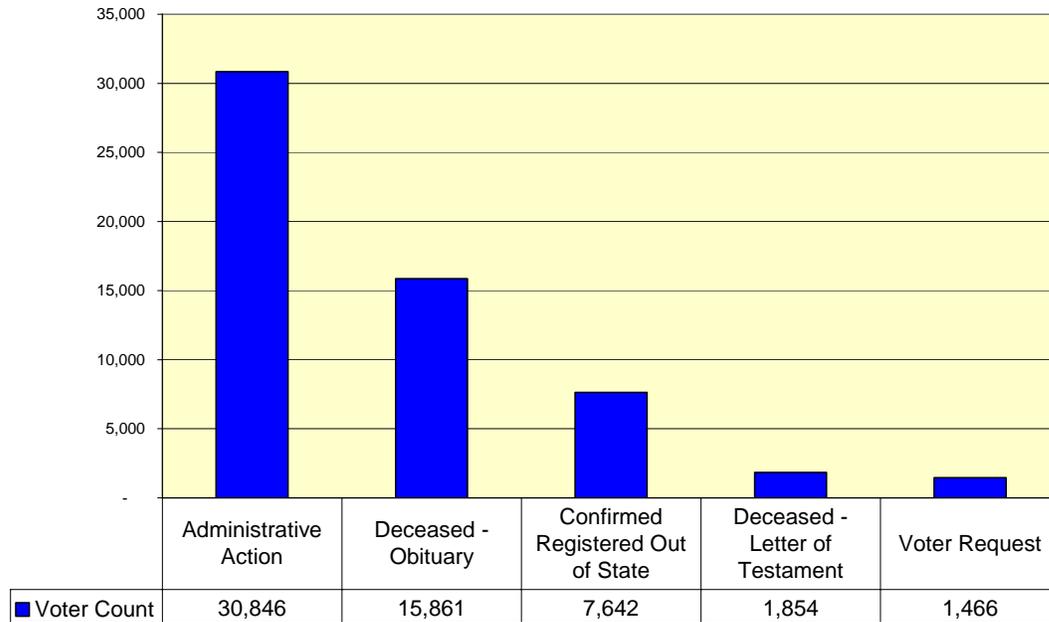
Total Number of Voter Records in SVRS: 4,198,303

Note: An Active Voter is one whose name will appear on the poll list.

A Cancelled Voter is one who will not become active again, e.g. deceased person.

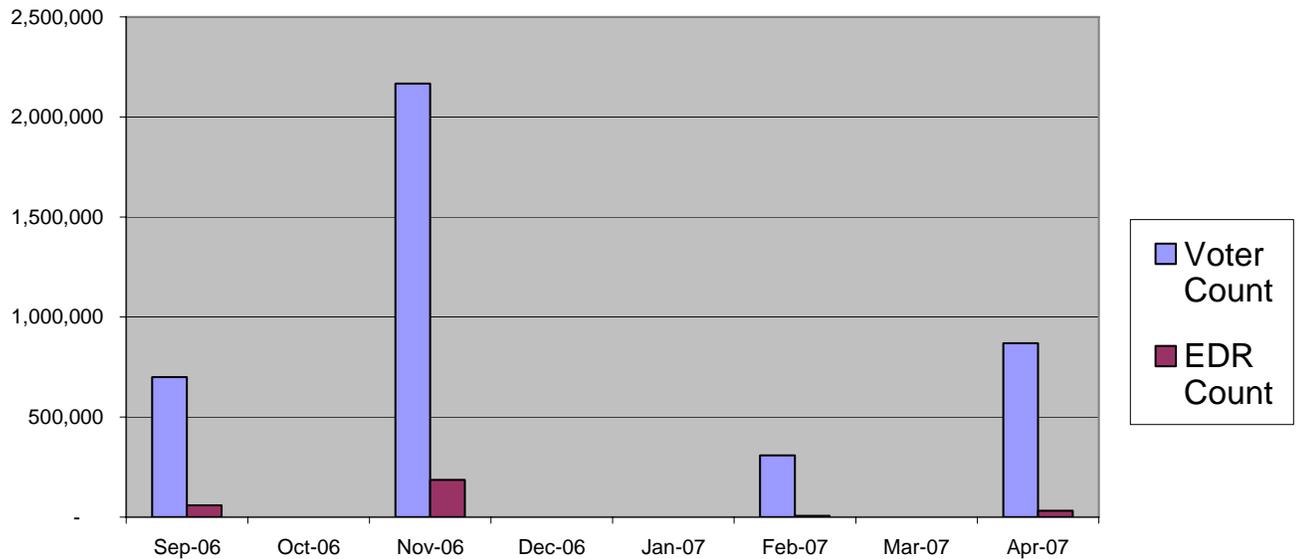
An Inactive Voter is one who may become active again, e.g. convicted felon.

Cancelled Voter Counts



The chart above depicts the reason a voter record is cancelled in SVRS. The chart below compares the number of voters with voter history and the number of voters who registered at the polls on Election Day for a specific election.

Voter Count and Election Day Registrations (EDR)



	September 12, 2006	November 7, 2006	February 20, 2007	April 3, 2007
■ Voter Count	699,210	2,166,730	308,965	868,427
■ EDR Count	58,788	185,285	6,130	31,513

Elections

30-day Forecast of Noteworthy Tasks

1. Ineligible Voter Lists and Wisconsin Death Lists: On January 25, the process resumed for providing clerks with updated information as they prepare for the February 19 Presidential Preference Primary and the April 1, 2008 Spring Election.
2. Clerk Support: SVRS staff will support clerks as they enter voter participation and Election Day voter registrations from the February election event and prepare for the April Spring Election.
3. Accenture Agreement Expires: SVRS staff will close out the transition activities with Accenture and take over maintenance of SVRS.
4. Voter Comparison with Felon Records: Once all records are updated in SVRS following the February Primary, SVRS staff will perform a comparison between voters' voting history and the felon list prepared by the Department of Corrections on Election Day.

Action Items

No action is required of the Board at this time.

ATTACHMENT #1

GAB Election Division's Training Initiatives
1/1/2007-2/16/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 1/1/2007)	Number of Students (since 1/1/2007)
SVRS "Initial" Application and Election Management	Instruction in core SVRS functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	16 hours	New users of the SVRS application software	29	265
SVRS "Advanced" Election Management	Instruction for those who have taken "initial" SVRS training and need refresher training or want to work with more advanced features of SVRS.	3 types of classes, 4 hours each	Experienced users of the SVRS application software	55	595
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only	5	65
Business Process	Instruction in voter registration and election management roles and responsibilities.	3 hours	Municipal and county clerks and staff	4	50
Absentee Workshops	Advanced training in using the absentee function of SVRS.	5 hours	Users of the SVRS application who use the absentee functionality.	3	25
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program	3 hours	1851 Municipal clerks; other staff	102	1789 clerks completed training; 62 non-compliant

ATTACHMENT #1

GAB Election Division's Training Initiatives
1/1/2007-2/16/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 1/1/2007)	Number of Students (since 1/1/2007)
	at least once every 2 years.				
Chief Inspector	Instruction for new Chief Inspectors before they can serve as an election official for a municipality during an election.	3 hours	Election workers for a municipality	Classes administered by local municipal clerk.	Unknown. Records are retained by local municipal clerks.
Special Registration Deputy	2005 Wisconsin Act 451 allows a qualified elector of Wisconsin to be appointed as a Special Registration Deputy (SRD) for the purpose of registering electors of any municipality in Wisconsin during periods of open voter registration.	2 hours	Qualified electors in Wisconsin	1	25
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors	5 since 1/1/2007; 5 more scheduled in 2008.	Average 200
WBETS	Web Based Election Training System. Still under development. Reference materials will be made available to the clerks in February; voter	Varies	County and municipal clerks and their staff	23 lessons being developed.	User group of 33 using now; all SVRS users (around 2000) will be able to start using in February.

ATTACHMENT #1

GAB Election Division's Training Initiatives
1/1/2007-2/16/2008

Training Type	Description	Class Duration	Target Audience	Number of Classes (since 1/1/2007)	Number of Students (since 1/1/2007)
	registration training scheduled to be available to clerks 3/24/2008.				

ATTACHMENT #3

Response to Mr. Paul Malischke request that the GAB add language to the front cover of the voter lists used at the polling place and to the Voter Rights Poster

Mr. Malischke's suggested language for amending EB-117 regarding directions to poll workers:

“No attempts shall be made to request identification beyond what is required by statute. Voters whose name appear on the poll list shall be requested to state only their name and address, unless the poll book indicates they are first-time voters who registered by mail and therefore identification is required.”

Given the information set out below, staff does not believe it is necessary to provide any additional instructions to poll workers on asking for identification from voters. We have reviewed our Election Day Manual. Instructional information for poll workers concerning requesting identification is set out at the following locations:

Page 21

Poll List Notations

There are a number of notations that will appear on the pre-printed poll list as well as a number of notations that election inspectors are required to make on the poll list to ensure proper documentation of voters and registrants on Election Day.

1. Pre-Printed Poll List Notations

The pre-printed portion of the poll list may contain certain notations to indicate special circumstances. Possible notations include:

a. ID Required.

- i. First-time voters who registered by mail are required to provide an identifying document establishing proof of residence prior to casting his or her ballot.

Note: The notation “ID Required” does NOT mean that a voter must provide photo ID. The notation indicates that the voter must provide an “identifying document” establishing proof of residence.

- ii. A list of acceptable documents establishing proof of residence can be found on page 26 of this manual.
- iii. If the elector is unable to provide acceptable proof of residence, he or she may use a corroborator (see page 27 of this manual) and register to vote at the polling place using the Election Day Registration process. His or her information (along with the corroborator's) should then be recorded on the supplemental poll list, like any other new registrant.

- iv. If the elector cannot provide proof of residence and cannot re-register using a corroborator, he or she may vote provisionally (see page 29 of this manual).
- b. Absentee.
 - i. Some municipalities may track absentee ballots on the pre-printed poll list. Other municipalities may not use this function and may only provide an Absentee Ballot Log (EB-124).
 - ii. This notation indicates that an absentee ballot was issued to the voter. This does not indicate that the absentee ballot was returned.
 - iii. If an individual noted as “absentee” appears at the polling place, he or she should be allowed to vote UNLESS a voter number already appears by his or her name indicating that his or her absentee ballot has already been processed and been placed in the ballot box.

If there is not a voter number next to the elector’s name, he or she should be allowed to vote, which would void his or her absentee ballot. The elector’s absentee ballot would then later be processed as a rejected absentee ballot.

Page 25

Election Day Registration

Ensuring that all eligible voters are properly recorded and registered on Election Day builds confidence in the election process. All electors must be registered before being issued a ballot and all electors who cast a ballot must be recorded on the poll list.

If an elector has not registered prior to Election Day, he or she may register at his or her polling place...

After the registrant completes all required fields of the Voter Registration Application (EB-131), he or she must sign the form in the presence of an election official. Failure to complete any required field of the Voter Registration Application (EB-131), will result in the registrant being unable to register and, therefore, unable to vote.

Once the registrant signs the form, the election official inspects the form for completeness. The election official must print his or her name and sign the form indicating that it has been accepted. The registrant must then provide proof of residence.

Proof of Residence

When a registrant presents a valid form of proof of residence, the election official must view the proof of residence and record the type (i.e. license, tax bill, etc...) and any unique number (such as a customer number or a license number) on the bottom of the Voter Registration Application (EB-131). The registrant’s name, address and type of

proof of residence shall then be recorded on the supplemental poll list, and the registrant shall then be issued a ballot like every other voter.

The following constitute acceptable proof of residence if the document contains the elector's current and complete name and current and complete residential address:...

Pages 27 & 28

Issuing Ballots and Voting

Providing the correct ballot to the voter and enabling the elector to mark a ballot privately and independently are two of the most important tasks for election inspectors on Election Day. It is essential that you are familiar with the correct procedure for issuing ballots and facilitating voting.

Procedure

When a registered elector (or an Election Day registrant upon completing his or her Election Day registration) appears at the polling place:

1. The elector announces his or her name to the election inspectors maintaining the poll lists.
2. A voter number is assigned to each elector beginning with the number "1" and recorded simultaneously on two identical poll lists prepared by two different election inspectors...
3. Once an elector's voter number has been recorded, he or she is given the correct ballot which has been initialed by two election inspectors.

Page 37

Frequently Asked Questions

7. When do election inspectors request proof of residence?

The election inspectors request proof of residence in two cases: if the notation "ID required" appears next to the name of a voter on the pre-printed poll list; or if the voter is registering on Election Day. The election inspectors should not request proof of residence from any other elector.

Below is the language from our Election Day poster EB-117. This information on this poster is required by state and federal law. It must be prominently displayed at the polling place.

NOTICE
General Information on Voting Rights Under Federal Laws

Voters whose names do not appear on the poll list are entitled to register to vote at the polling place by completing a voter registration application and providing acceptable proof of residence or having a resident of the municipality with acceptable proof of residence corroborate the voter registration application. *S. 6.55 Wis. Stats.*

Voters who are unable to comply with identification requirements for mail-in registrants, are entitled to register to vote at the polling place by completing a voter registration application and providing acceptable proof of residence or having a resident of the municipality with acceptable proof of residence corroborate the voter registration application. *42 U.S.C. 15482(a), 15483(b)*

Voters who vote in an election for federal office after the established time for polls to close due to a court order or other order requiring the polls to remain open extended hours will have to vote by provisional ballot (unless those voters were in line at the time polls closed). *42 U.S.C. 15482(c)*

Voters may have to show identification the first time they vote in an election for federal office after January 1, 2004, if they registered to vote for the first time in a municipality by mail after January 1, 2003, and have not provided identification or identifying information to the municipal clerk before election day, unless they are entitled to vote absentee under federal law. *42 U.S.C. 15483(b)*

Form EB-117 is posted at the polling place pursuant to section 5.35(6)(a)4b, Wis. Stats.

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KEVIN J. KENNEDY
Legal Counsel

MEMORANDUM

DATE: February 20, 2008

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Activities

Campaign Finance Update

Sharrie Hauge, Special Assistant to the Legal Counsel

Introduction

Under Chapter 11 of the Wisconsin State Statutes, the Campaign Finance Section administers the campaign finance reporting system, which includes:

- Auditing Campaign Finance reports for compliance;
- Notifying registrants of filing requirements;
- Administering the Wisconsin Election Campaign Fund Program; and,
- Creating a Campaign Finance Database to ensure public disclosure.

Key Metrics

1. **Audits**

Staff completed 95 audits this reporting period. One committee was terminated and 17 committees were put on "R" status. The committees on "R" status are no longer required to file campaign finance reports, however, they are required to be available to answer questions and resolve any violations prior to termination being granted.

2. **January 2008 Continuing Report**

The January 2008 Continuing report for all registrants (Candidates, PACs, Parties, Referendum Committees, Conduits and Corporations) was due in the GAB office on January 31, 2008. Of the 1250 registrants required to file, 1164 timely filed and 86 failed to file. On February 11, staff sent 10-day reminder notices to 32 Candidate committees, 20 PACs, 14 Corporations, 9 Parties, 7 Conduits and 1 Referendum. On February 13, staff sent settlement offer letters to 3 candidate committees for failure to file their election-related report.

3. **2007 Annual Filing Fee**

Each individual, committee, group, or corporation that is registered with the Government Accountability Board whose spending exceeds a total of \$2,500 in any year, shall pay an annual filing fee of \$100. *This provision does not apply to candidates or personal campaign committees.* It does apply to PACs, Conduits, Corporations and Political Party committees. The \$100 filing fee was due on January 31, 2008 with the committees January 2008 continuing report.

To date, \$28,400 has been collected for 2007 annual filing fees. Staff is in the process of determining how many committees were required to pay the annual filing fee and will send out subsequent settlement offer notices if the committees are delinquent.

4 **Pre-Primary Spring Report**

Staff sent **700** filing notices for the Pre-Primary Spring report. Notices were sent to 40 candidates and their treasurers, all conduits, political parties, and PACs. (For all non-candidate committees this is the only notice they receive to file the spring Primary and Election reports). The Pre-Primary report was due in the Elections Board office on February 11, 2008. This report covers activity from January 1, 2008 through February 4, 2008.

On February 15, 2008, staff sent four settlement offer notices to candidate committees for the non-filing of the election-related report.

Noteworthy Activities

Campaign Finance Information System

There has been significant progress made in the development of the Campaign Finance Information System since the last GAB meeting. On February 5, 2008, Joint Application Design (JAD) sessions began to determine the design of the Campaign Finance Information System. On February 15, 2008, the contract between PCC and GAB was signed. Currently, the project is ahead of schedule.

Looking Ahead

The Campaign Finance staff will be very busy over the next 30 days continuing to participate in Joint Application Design (JAD) sessions (March 3 – March 14), preparing for the spring pre-election reports and sending notices to registrants who either failed to file their January 2008 continuing report or failed to pay their 2007 annual filing fee.

Action Items

No action is required of the Board at this time.

Contract Sunshine Update

Tommy Winkler, Contract Sunshine Program Director

Introduction

Wisconsin's Contract Sunshine Act (2005 Act 410) calls for the creation and maintenance of an Internet site at which anyone may access information about every state contract, purchase, and solicitation of bids or proposals that involves an annual expenditure of \$10,000 or more. *Wisconsin Statutes* direct the Wisconsin Government Accountability Board to create and maintain this site. In enacting the Contract Sunshine Act, the Legislature's intention was to enhance citizens' confidence in the State's procurement process by providing a one-stop Internet location where citizens, the press, vendors, and others can learn about current procurement activities. The legislature intended that the Act provide potential vendors of goods and services with ready access to information about the State's purchases and confirm that the State's procurement programs are operating fairly and efficiently.

Key Metrics

- 23** The number of state agencies that have participated in training sessions geared at presenting and implementing the new website. Demonstrations were given to agency procurement officials on how to view and enter procurement information on the new website.
- ~\$17,000** The remaining funds available to modify and enhance the existing Contract Sunshine website.
- 54** The number of statewide contracts recently entered into the Contract Sunshine system.

Noteworthy Activities

Government Accountability Board staff has presented Contract Sunshine demonstrations before DOA procurement staff and procurement personnel throughout Wisconsin state government at their monthly State Agency Purchasing Council meeting held on February 20. Staff will continue to work with agencies to address reporting content and functionality issues agencies encounter as they begin to use the new system.

Looking Ahead

Government Accountability Board staff will continue to work with state agencies in beginning to report procurement information required under the Contract Sunshine Act using the new online system. Additional meetings are scheduled with various state agency personnel to discuss the feasibility of a data import into the existing website. Website enhancements and improvements will be implemented based upon feedback from both internal and external stakeholders.

Action Items

No action is required of the Board at this time.

Financial Disclosure Update

Tommy Winkler, Contract Sunshine Program Director

Introduction

State officials and candidates file Statements of Economic Interests under Chapter 19 of Wisconsin Statutes. These statements are filed on an annual basis with the Government Accountability Board, and they are open for public inspection at the time they are filed. A statement identifies a filer's, and his or her immediate families, employers, investments, real estate, commercial clients, and creditors. The idea is to identify which businesses and individuals an official is tied to financially. The focus is on identifying a filer's financial relationships, not on identifying the individual's wealth. This information is entered into an online index that is managed by Government Accountability Board staff.

Key Metrics

- 2078** The number of pre-printed 2008 Statements of Economic Interests staff prepared to mail to state public officials required to file under Section 19.43, *Wisconsin Statutes*.
- 587** The remaining number of 2008 Statements of Economic Interests staff will mail to state public officials in the next two weeks, at which time all state public officials will have received their annual pre-printed statement.
- 511** The number of annual statements of economic interests filed with the Government Accountability Board as of noon on February 19, 2008.
- 395** The number of annual statements of economic interests processed by GAB staff into the Eye on Financial Relationships website for the public to view an index of state public officials' financial interests.

Noteworthy Activities

Six of the eight batches of pre-printed Statements of Economic Interests were mailed out to state public officials in January and February. Staff will mail the remaining batches in the next two weeks. Annual statements are due for all filers no later than April 30, 2008.

Looking Ahead

Government Accountability Board staff will investigate the feasibility, efficiency and effectiveness of moving to online filing of Statements of Economic Interests for future filing periods. Government Accountability Board staff will continue to process Statements of Economic Interests into the online index as they arrive over the coming months.

Action Items

Ratify use of current forfeiture schedules on interim basis.

Lobbying Update

Barton Jacque, Lobbying Program Director

Introduction

To date, Wisconsin lobbyists and registered organizations have spent about \$34,000,000 trying to influence the administrative and legislative rule-making process. We have on our website PDF documents that outline the total number of hours and dollars spent by organizations over the course of 2007. Thus far, Wisconsin has 772 registered principals and 806 licensed lobbyists. In the coming days we will release a report outlining the notable lobbying benchmarks and activities.

Key Metrics

Measuring the success and timeliness of the reports are quantitative. We have 100% of the Statement of Lobbying Activities and Expenditure reports filed for the July – December period.

State agency liaison reporting has been progressing and should be wrapped up within the next week.

Noteworthy Activities

Statements of Lobbying Activities and Expenditure Reports have been received. With the exception of one extraordinary circumstance all reports were completed and filed online in a timely manner, and I have no recommendations for forfeiture. Although there were 3 organizations that filed late reports, (past the 2 day grace period) internal issues within the organization had contributed to their tardy filing. I enlisted the help of the lobbyists to remind the organizations that their filing was past due, and the matters were quickly resolved. I also determined that of the late filers, there was little to no lobbying activity for the prior six months, suggesting that their internal disruptions may have stymied their lobbying effort.

Looking Ahead

I will begin my 6 month military leave March 19. In the mean time I will be working with Jonathan, Kevin, and essential staff to ensure we have a schedule of lobbying events in place for the period I will be absent.

It would be advantageous to have only one or a very limited number of people managing, and above all else, communicating with each other about this report. The database(s), queries, sub-reports, and active web pages are complex and demand 100% accuracy in management. Jonathan and I have discussed this need and are formulating a strategy to ensure this program runs smoothly when I am gone. Also, I have a high degree of confidence in my back-ups, Tommy and Helena, and I have no doubt they can handle any issue that may arise.

Action Items

Ratify use of current forfeiture schedules on interim basis.

State of Wisconsin\Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the February 25, 2008 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Special Assistant to the Director

SUBJECT: Administrative Activities

Agency Organization

Introduction

This has been a very busy time since the last meeting. Preparations for the Presidential Preference Primary and the Spring Non-Partisan primary along with the beginning of Joint Application Design (JAD) sessions for the campaign finance reporting application have kept agency staff intensely focused. These substantive items are discussed in the Division reports.

Noteworthy Activities

1 Resolution of Eligibility Issue Concerning Certain Board Members

We continue to wait for a response from the Attorney General on our request for an opinion with respect to the eligibility of certain Board members. The Department of Justice is treating the matter as a request for a formal opinion, which means additional time.

2. Accounting

The budgetary accounting for the new agency has been set-up. A new chart of accounts, funding strings and budgetary controls are now in place. Since we are now able to use the new accounting system and the new agency budget has been loaded into the system, we need to close out the State Elections Board and State Ethics Board agency accounts. We anticipate this process will be completed within the next few weeks.

3. Space Planning

On December 20, 2007, staff submitted a space allocation request to the Department of Administration's, Division of Facilities, to begin the process of finding one location for all three GAB offices. Sharrie Hauge and Helena Huddleston have been assigned to this

project. The Division of Facilities staff has completed its analysis of our request. I have been advised by the space planning staff there is not enough state space available in our current three locations for our combined agencies. This fits with our plan to secure private space.

However, the escalating shortfall in revenue collections has led the Department of Administration to put a moratorium on office relocations. The management team is meeting with the DOA budget team assigned to our agency to discuss our financial situation. We have a number of ideas on how we can free up funds to relocate as well as begin the recruitment of a staff attorney to fill the vacancy created by Jonathan Becker's appointment as Division Administrator.

4. Staffing

Currently, staff is in the process of recruiting for two vacant Elections Specialist and three vacant Information Technology positions. We are also recruiting for a limited term employee to assist us in developing tools to improve disability accessibility at polling sites.

5. Resolution of Ballot Access Complaints

On January 23, 2008 I issued a compliance review order pursuant to Section 5.06, Wis. Stats., resolving an appeal of the decision of a local filing officer with respect to a candidate's qualifications to appear on the spring primary ballot. The decision was appealed to Milwaukee Circuit Court. Judge Kahn upheld our decision and the candidate remained off the primary election ballot. *Holloway v. City of Milwaukee Elections Board et al.* Milwaukee County Circuit Court Case No. 08-CV-2175

6. Reporting Closed Session Action

When preparing the minutes for the last meeting, staff discussed how to reflect the action in closed session. There is no requirement to disclose specific action under the open meetings law. In fact the agency is restricted from providing certain details with respect to requests for advice and the status of investigations. See Section 5.05 (5s), Wis. Stats., set out below.

I believe the Board should consider adopting a policy of disclosing in its open session minutes the fact the Board considered the following items in closed session without revealing any details:

- Requests for advice – how many requests considered and how many opinions issued
- Investigations – how many cases presented and how many investigations opened
- Litigation - how many cases considered
- Enforcement – how many complaints authorized for filing

This provides an additional level of transparency that demonstrates the Board is actively pursuing compliance with the campaign finance, ethics and lobbying laws.

Looking Ahead

The staff will be preparing for the March 26, 2008 meeting. There are a number of key items for review including a discussion of regulation of issue advocacy and review of the policy on campaign coordination. The staff has a number of deadlines for filing financial reports on the use of HAVA funds. Staff is also completing the application process for additional federal funding. Staff is also preparing a report for the Joint Legislative Audit Committee for March 31, 2008.

I will continue to work on organizational matters including staff assignments, office space relocation and staff recruitment.

Action Items

1. Policy on Disclosing Closed Session Activity

Applicable Statute

Section 5.05

(5s) Access to records. Records obtained or prepared by the board in connection with an investigation, including the full text of any complaint received by the board, are not subject to the right of inspection and copying under [s. 19.35 \(1\)](#), except as provided in [pars. \(d\)](#) and [\(e\)](#) and except that:

- (a) The board shall permit inspection of records that are distributed or discussed in the course of a meeting or hearing by the board in open session.
- (b) Investigatory records of the board may be made public in the course of a prosecution initiated under [chs. 5 to 12, subch. III](#) of ch. 13, or [subch. III](#) of ch. 19.
- (c) The board shall provide information from investigation and hearing records that pertains to the location of individuals and assets of individuals as requested under [s. 49.22 \(2m\)](#) by the department of children and families or by a county child support agency under [s. 59.53 \(5\)](#).
- (d) If the board commences a civil prosecution of a person for an alleged violation of [chs. 5 to 12, subch. III](#) of ch. 13, or [subch. III](#) of ch. 19 as the result of an investigation, the person who is the subject of the investigation may authorize the board to make available for inspection and copying under [s. 19.35 \(1\)](#) records of the investigation pertaining to that person if the records are available by law to the subject person and the board shall then make those records available.
- (e) The following records of the board are open to public inspection and copying under [s. 19.35 \(1\)](#):
 - 1. Any record of the action of the board authorizing the filing of a civil complaint under [sub. \(2m\) \(c\) 6](#).
 - 2. Any record of the action of the board referring a matter to a district attorney or other prosecutor for investigation or prosecution.
 - 3. Any record containing a finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred.
 - 4. Any record containing a finding, following an investigation, that no probable cause exists to believe that a violation of the law has occurred.
- (f)
 - 1. Except as authorized or required under [subd. 2.](#), records obtained in connection with a request for an advisory opinion issued under [s. 5.05 \(6a\)](#), other than summaries of advisory opinions that do not disclose the identity of individuals requesting such opinions or organizations on whose behalf they are requested, are not subject to the right of inspection and copying under [s. 19.35 \(1\)](#). Except as authorized or required under [subd. 2.](#), the board shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the opinions.

2.
 - a. The board may make records under [subd. 1](#), public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested.
 - b. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.
 - c. The board shall make public advisory opinions and records obtained in connection with requests for advisory opinions relating to matters under the jurisdiction of the elections division.