

Motion as amended:

Resolved, that the Board interprets Wis. Stat. §13.625(1) as amended by Act 153 to *permit* a lobbyist to furnish a campaign contribution to a candidate for any office at any time except that a lobbyist may make a personal contribution to a partisan elected state official running for any office or to a candidate for partisan elective state office only between the first day authorized by law for the circulation of nomination papers and the date of the election in the year of the candidate's election.



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WISCONSIN LEGISLATURE

GOVERNMENT
ACCOUNTABILITY BOARD

P.O. BOX 8952 • MADISON, WI 53708

May 20, 2014

Judge Thomas Barland, Chair
Government Accountability Board
212 East Washington Ave., Third Floor
Madison, WI 53707

The Honorable Thomas Barland and Honorable Members of the Government Accountability Board:

As the leaders of our respective caucuses, we respectfully request that you reconsider the interpretation proposed by GAB staff regarding 2013 Wis. Act 153. [See Memorandum for May 21-22, 2014 Board Meeting; Subject: Proper Interpretation of 2013 Wis. Act 153]. It is our opinion, and that of the attorneys with the nonpartisan Wisconsin Legislative Council, that the text of §13.625 is clear on its face.

As you will see in the Legislative Council memo, the plain language of §13.625 allows a lobbyist to “make” most campaign contributions at any time, except that a lobbyist may only “personally make” contributions to candidates for partisan state officials during specified time periods.

We believe that this is the only logical interpretation of the statute, and fear that other interpretations could lead to confusion, inadvertent non-compliance, and costly litigation against the state. It is our position, based on a plain language analysis of the statute, that §13.625 speaks for itself and we respectfully request that you interpret the statute as it is written.

Please see the enclosed memo from Legislative Council for a more detailed legal analysis.

Sincerely,

Rep. Robin J. Vos
Assembly Speaker

Sen. Scott Fitzgerald
Senate Majority Leader

Enclosures (2)

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GOVERNMENT
ACCOUNTABILITY BOARD

May 19, 2014

VIA HAND DELIVERY

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Government Accountability Board
212 East Washington Ave., Third Floor
Madison, WI 53703

Lobbyists and Campaign Contributions

Dear Board Members:

On behalf of the Association of Wisconsin Lobbyists (“AWL”), we urge you to reexamine the Government Accountability Board’s broad interpretation of the restrictions under Wis. Stat. §§ 13.625(1) and (3) and what it means to “furnish” a campaign contribution. AWL has long objected to the G.A.B.’s interpretation of this statute. And, with the recent passage of 2013 Wisconsin Act 153, the problems presented by the G.A.B.’s erroneous interpretation have become even more apparent.

“Anything of Pecuniary Value” and Campaign Contributions

Under state law, a lobbyist may not “furnish” anything of pecuniary value to certain public officials and such items may not be “solicited” from these officials.¹ Campaign contributions, however, are then excluded as an item of value – but with campaign contributions from a lobbyist to certain candidates for partisan elective state office subject to a limitation on when they can personally be made.² Accordingly, the time limitation only applies to when a lobbyist may personally make a contribution with his or her own funds.

The G.A.B.’s interpretation of the statute is somewhat different. Under its read of the statute, the G.A.B. has historically stated that campaign contributions are not excluded outright as something of pecuniary value. Instead, the G.A.B. has taken the position that campaign contributions always remain something

¹ Wis. Stat. §§ 13.625(1) and (3).

² Campaign contributions are excluded as something of pecuniary value in Wis. Stat. § 13.625(1)(b)3. but subject then to the further restriction on the timing of lobbyist campaign contributions in paragraph (c).

A lobbyist may personally make a contribution to a partisan elective state official only during the “contribution window” – generally, between April 15 and the date of the November general election in the year of the candidate’s election. In the case of legislative candidates, this statutory “window” for campaign contributions by lobbyists does not begin until the legislature has concluded its final floor period and is not in special or extraordinary session. Wis. Stat. § 13.625(1)(c).

of value and accordingly cannot be “furnished” by a lobbyist unless the timing exception in Wis. Stat. § 13.625(1)(c) applies.

As a result of its interpretation, the G.A.B. has stated in its guidance that:

- a lobbyist and a candidate may not discuss any campaign contributions or fundraising events; and,
- a lobbyist may not deliver contributions from other nonlobbyist individuals, PACs or conduits unless the “contribution window” is open during the time period before an election and, for legislative candidates, the state legislature is not in session.

AWL disagrees with the G.A.B.’s broad interpretation of “furnish” and believes that the statute only restricts a lobbyist from personally making a campaign contribution outside the contribution window. At all other times, a lobbyist should be allowed to discuss campaign contributions and deliver contributions from other nonlobbyist individuals, PACs and conduits.

Discrimination Against Small Organizations and Lobbyists

The G.A.B.’s interpretation of Wis. Stat. § 13.625(1) and “furnish” directly discriminates against small organizations that do not have the staff, members or resources to have multiple individuals interact with candidates for partisan elective state office. While the G.A.B. has suggested that a candidate may ask a lobbyist for a nonlobbyist contact, that person practically may not exist in a small organization.³

In a large organization, a candidate can still communicate with nonlobbyists about campaign contributions. In a small organization, however, there often is one individual whose position as executive director also requires he or she to act as the organization’s lobbyist, political director and membership coordinator. In these situations, there is not a nonlobbyist employee for the candidate to contact and the organization depends on this single individual to coordinate and make recommendations on otherwise lawful campaign contributions.

Under 2013 Wisconsin Act 153, the G.A.B.’s position on lobbyists and campaign contributions will result in lobbyists and many organizations being prohibited from any participation in fundraising activities related to the 2014 elections. Such an absolute result raises serious constitutional concerns about the extent that the G.A.B. is interfering with a lobbyist’s First Amendment rights.⁴

Conclusion

AWL requests that the G.A.B. reexamine its broad interpretation of Wis. Stat. § 13.625(1) and “furnish.” Alternatively, as we requested in 2008, the G.A.B. should at least promulgate administrative rules on the solicitation and furnishing of campaign contributions rather than implement its interpretation through

³ See 2007 Wis Eth Bd 06, ¶ 7.

⁴ See *Barker v. Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993); *Katzman v. Ethics Board*, 596 N.W. 2d 861, 228 Wis.2d 282 (Wis. App. 1999).

informal guidelines. A need for rulemaking has become even more important since the passage of 2011 Wisconsin Act 21 and the requirements that it places on state agencies.

GODFREY & KAHN, S.C.

A handwritten signature in black ink, appearing to read "Jodi Jensen". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Mike B. Wittenwyler

Jodi Jensen