

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

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DATE: September 9, 2014

TO: Libertarian Party of Wisconsin
Peoples Party
Wisconsin Broadcaster's Association

FROM: Wisconsin Government Accountability Board

SUBJECT: Dismissal of complaints against the Wisconsin Broadcasters Association

During the closed session of its meeting of September 4, 2014, the Government Accountability Board dismissed a complaint that had been filed against the Wisconsin Broadcasters Association.

The Government Accountability Board received a complaint on July 4, 2014 from Andrew Craig against the Wisconsin Broadcasters Association ("W.B.A."). The complaint was filed on behalf of Robert Burke, Libertarian candidate for Governor, and relates to the W.B.A.'s proposed sponsoring of a gubernatorial debate between Scott Walker and Mary Burke and excluding other candidates for Governor. The complaint essentially alleges that the W.B.A., by excluding other candidates, is thereby furnishing a valuable in-kind contribution to Mr. Walker and Ms. Burke. A follow-up document was submitted by Robert Burke. The W.B.A. filed a response.

On August 28, 2014, the G.A.B. received a communication from The Peoples Party which raised similar issues regarding participation of its candidate, Dennis Fehr, in W.B.A. debates.

There is no Elections Board or Government Accountability Board precedent on this issue other than a dismissal of a similar complaint by the Elections Board in 2002 without discussion or explanation.

The Federal Elections Commission has promulgated a rule in this area which provides that an organization may stage a political debate, without campaign finance implications, as long as it uses "pre-established objective criteria to determine which candidates may participate in a debate."¹ The W.B.A. has stated that it has adopted "pre-established objective criteria" for participation in the debate. Those criteria are that a candidate have at least 10 percent statewide support and have raised a minimum of \$250,000 in campaign funds.

In a telephone conversation with the Federal Communications Commission ("F.C.C."), the F.C.C. stated that it considers political debates to be "a bona fide news event" and that no station is compelled to provide equal time to all candidates.

Finally, Wis. Stats. §§11.01 (6) (b) 9 and 11.01 (7) (b) (7) exclude from the definition of contribution or disbursement the cost of covering or carrying a news story. And Wis. Stat. §11.30 (4m) provides that the campaign finance laws "shall not be construed to restrict coverage of bona fide news stories [or] interviews with candidates"²

For these reasons, the Board voted unanimously to dismiss the complaints of Andrew Craig and of The Peoples Party against the Wisconsin Broadcasters Association on the basis that there is no reasonable suspicion that a violation of Chapter 11 has occurred or is occurring.

This record of the Board's action regarding a complaint is being released under Wis. Stat. § 5.05(5s)(e)3, which authorizes the release of "any record containing a finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred." The complaint itself is not a public record, and cannot be released, and the Board and its staff are prohibited from further comment.

¹ **11 C.F.R. §110.13 Candidate debates.**

(a) *Staging organizations.* (1) Nonprofit organizations described in 26 U.S.C. 501 (c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters (including a cable television operator, programmer or producer), *bona fide* newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f), provided that they are not owned or controlled by a political party, political committee or candidate. In addition, broadcasters (including a cable television operator, programmer or producer), *bona fide* newspapers, magazines and other periodical publications, acting as press entities, may also cover or carry candidate debates in accordance with 11 CFR part 100, subparts B and C and part 100, subparts D and E.

(b) *Debate structure.* The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection.* For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

[61 FR 18051, Apr. 24, 1996; 61 FR 24533, May 15, 1996, as amended at 67 FR 78681, Dec. 26, 2002]

² §11.30 (4m) This chapter shall not be construed to restrict coverage of bona fide news stories, interviews with candidates and other politically active individuals, editorial comment or editorials by any broadcasting station, cable television operator or producer, Internet site, or newspaper or other periodical publication, including an Internet or electronic publication, unless the communication is made by a candidate, personal campaign committee, support committee of a candidate authorized under s. 11.05 (3) (p), or a political party. Activities that are not restricted under this subsection are not subject to an attribution requirement under sub. (2) and need not be reported as a contribution or disbursement.