

Summary:

Ancillary events, like a golf outing, held in conjunction with a political fundraiser are treated as part of the fundraiser unless the registrant/beneficiary of the fundraiser is able to show that the fundraiser was a separate and independent event. In determining whether ancillary events are separate and independent from a political fundraising event, PAC/Conduit events to raise money for the PAC are evaluated differently from events held to raise money for a candidate. Compensation for time and travel for persons paid to attend fundraising events is not considered a contribution to the beneficiary of the fundraising event unless the compensated attendee performs, in the course of the fundraiser, services for the beneficiary of the fundraiser. (Issued to Peter C. Christianson, January 18, 2006)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on March 26, 2008.

Opinion:

You have requested that the State Elections Board issue an opinion, pursuant to §5.05(6), Stats., regarding the campaign finance treatment, under ch. 11 of the Wisconsin Statutes of expenses that are incurred, or fees that are paid, to attend a social, professional, or recreational event that is held in conjunction with, or concurrently with, a political fundraiser.

As you know, the Board's staff has previously opined that the revenue and expenses of holding a fundraiser are considered contributions and disbursements under §11.01(6) and (7), Stats., and, as such, are required to be reported by the beneficiary of the contributions raised by the event. That is still the rule for the revenue and expenses of events that are conducted, promoted and/or administered as a single or combined event and for events whose charges or fees are paid to or through one or more political committees. Thus, a golf outing or dinner and fundraising reception that are promoted as a single event - or all the fees for which are paid to, or through, one or more political committees - are treated as one event. Consequently, all the fees paid by those attending or otherwise participating are treated as contributions to the beneficiary(s) of the event(s) and the payments to the vendors of goods and services for the event(s) are treated as disbursements.

The Board believes, however, that the foregoing principle applies only to the expenses of holding a political fundraiser. The expenses of holding a separate, non-political¹ event – an event that is not made a part of the political fundraiser – are not included in the expenses of the fundraiser, if the non-political event is independent, separate and distinct from the fundraiser. The preceding conclusion is obvious if the fundraiser and the non-political

¹ The term, “non-political,” is used in the sense or context of not having been done for the purpose of influencing the election or defeat of a clearly identified candidate under §11.01(16), Stats.

event have no connection to each other, but much less obvious if the two events are connected by dimensions of time, place, sponsor, and promotion.

Thus, political fundraisers that are held in proximity of time and/or place to social, recreational or professional events, but that are conducted and administered wholly separate from those events, **may** be considered and treated for campaign finance purposes as separate events. Consequently, the fees paid to attend or participate in those proximate but separate social, recreational or political, events would not be considered contributions to the political beneficiary of the fundraiser and the expenses paid to hold those events are not considered expenses of the fundraiser.

Given the format described above, the question arises: What are the circumstances or details of separation between events that are proximate in time and/or place, or other connection, that qualify those events for treatment, under campaign finance law, as independent events?

Because the determination of independence is a fact-intensive determination, determining whether there is sufficient separation between the fundraising event and any other related and/or proximate events that are asserted to be separate from the fundraising event will have to be made on a case-by-case basis. Nevertheless, one can generalize that the more independent the fundraising event is from any of the planning and administration of the ancillary events, the more likely that the fundraising event will be treated as a separate event. The consequence from a determination of independence is that the ancillary events will not be considered an event being held for political purposes solely because of their proximity or other connection to the fundraising event. Consequently, the ancillary events will not be subject to campaign finance regulation solely because of the proximity or other connection to the fundraising event.

At this point in the discussion, it is necessary to distinguish the treatment of events held by a political committee (PAC) from those held by a candidate committee. A candidate committee attempting to raise funds for itself may find itself in a different classification or circumstance than a PAC or conduit² attempting to raise funds for itself because PAC's have sponsors who are, usually, some form of corporate entity, (union, trade association, public interest association or other corporate entity), and who are authorized by §11.38, Stats., to incur unlimited administration expenses and up to \$500 (annually) of solicitation expenses on behalf of the sponsored PAC. Candidates do not have the benefit of such sponsors or the benefit of an annual corporate solicitation expense.

Also, a corporate sponsor is likely to regularly hold social/professional or recreational events for the sponsor's own purposes. A PAC is more easily able to tie its fundraiser into the sponsor's events without compromising the independence of the sponsor's events. A candidate's campaign committee that sponsors its own events has a difficult burden in showing that its ancillary events are independent from its fundraising event.

² Because conduits are nothing more than collective bank accounts, they cannot sponsor events, but the conduit's sponsor can sponsor an event and encourage conduit members to deposit money into their conduit account or encourage their conduit members to contribute to a specific candidate.

While it is possible for someone to sponsor a fundraising event for a candidate, all of the expenses incurred by the sponsor are either a contribution to the candidate or must be reimbursed by the candidate to the sponsor. A PAC's sponsor also has to treat all of the solicitation expenses incurred in sponsoring a fundraiser as contributions to its PAC, or have the PAC reimburse the sponsor, but a corporate sponsor has a \$500 solicitation expense that is not treated as a contribution. A corporate employee who works on both political fundraising events together with other non-fundraising events has to allocate their time and expense to an amount attributable to the political fundraising activity. That amount is subject to the \$500 solicitation expenses exception (for PAC activity) and the balance, if any, has to be reimbursed to the corporation.

Finally, candidates and their committees may not coordinate expenditures with an independent organization. Under Wisconsin campaign finance law, coordination that does not involve candidates, their committees, or their agents, is not an issue.

What are the dimensions or characteristics of a separate, distinct, and independent event? The first and foremost essential to a determination of separation is that administration and collection of the fees for the non-political event(s) are handled separately by someone other than the beneficiary of the fundraising event and none of the money for the ancillary event is paid to, or inures to the benefit of, the political beneficiary(s) of the fundraising event.

Taking into account the distinctions between PAC/conduit events and candidate events discussed above, generally, a discussion of the elements of separation or non-separation of related events includes the following:

1. The scheduling of the ancillary events: Events that are scheduled together have the appearance of being a single or combined event. That appearance increases the fundraising committee's burden of showing that the events are independent.
2. The timing of the two events: How proximate in time is the fundraising event to the ancillary event(s)? Are they a day apart; hours apart; or does one follow the other? The closer that two or three events are to each other, the more they all look like one event. The farther apart in time events are, the less likely that one is promoting the other. Two events that are held days or a week apart do not have much carryover from one event to the other.
3. The location of the events: Are they at the same place; or a different place; and if at a different place how many miles apart are they? Events held at the same location, like a golf club, tend to look like one event when they are also proximate in time.
4. The promotion of the events: Did the political committee (spend money to) promote the ancillary events; did the sponsor of the ancillary events (spend money to) promote the fundraiser? If the events are promoting each other - in their invitations and other communications with members and with the public - they tend to look like one event. If the ancillary events promotes themselves and do not promote the

fundraising event; and the fundraising event does the same, the events are more likely to be treated as separate events. However, an invitation could mention the holding of the other events, referring the reader to another administration resource, without being viewed as promoting the other events.

5. Who handled the administration of the fundraising event (sent out invitations with literature; registered participants in the fundraiser; obtained the date and made arrangements with the hosting facility and conducted other administrative detail); and who handled the administration of the ancillary events? The more that the

administration for each event was separate from the other, the more likely that the events will be treated as independent for campaign finance purposes.

6. Who collected the money for each event:
 - a. The fundraising event: The checks being written for fundraising events are contributions within the meaning of §11.01(6), Stats. Consequently, the only event at which those checks should be delivered and received is the fundraising event. Contributions should not be delivered or received at other events unless all the events are being treated as part of the fundraising event (with the attendant campaign finance implications).
 - b. The social/recreational/professional event: Clearly, the fees and expenses for these events cannot be run through a depository account without having the campaign finance implications that the sponsors are trying to avoid. The entity administering the fundraising event also should avoid accepting checks intended for the ancillary events because that circumstance has the appearance of a combined or single event.
7. Did the political (candidate) committee raise funds during the ancillary events? If the political committee engaged in fundraising (soliciting and/or collecting funds) during the ancillary events – the golf outing or the dinner at the golf club – the political committee has an almost impossible burden in trying to show that all the events ought not be treated as part of one fundraiser.

Finally, in a related matter, you have asked the Board to opine on the following question: if a person is compensated for their time and travel to attend a fundraiser, is that compensation an expenditure for political purposes: (a) if the individual compensated makes a contribution at the fundraiser; or (b) if the individual compensated does not make a contribution at the fundraiser? The consequence of this opinion is that if such compensation is considered to have been made for political purposes, it may not be made by a corporation and it must be reported by a registrant, as a disbursement. The Board must preface any opinion with the caveat or disclaimer that it makes no comment on the application, to these circumstances, of Wisconsin's law regulating Lobbying under subchapter III of chapter 13 of the Wisconsin Statutes. The "Lobby Law" implications of this question should be discussed with the State Ethics Board.

The Board's initial reaction to the campaign finance implications of this question is that the compensation provided (to persons to attend a fundraising event) is not for a political purpose in that it is not made to influence the election or defeat of a clearly identified candidate (or vote at a referendum). The compensation is not being paid to promote the candidate; the compensation is being paid to promote the association or corporation who is paying the compensation. The person attending the event is there to promote the interests of the entity paying the compensation. The only benefit that attendance provides the event's beneficiary is the making of the contribution. Because a person's attendance is not necessary to make a contribution to the political beneficiary of the event (and, in fact, many contributions are mailed to the recipient committee even if the contributor(s) attends the event), the compensation provided to someone to attend an event appears to be for the contributor's benefit, not the candidate's (or that of any other political beneficiary of the event).

The preceding discussion applies to the typical circumstances in which persons are compensated for their time and travel expenses to attend political fundraising events. In the typical circumstance, the compensated individual does not perform services for the candidate or other beneficiary of the fundraiser. If, in the exceptional circumstance, the compensated individual did perform services for the candidate or other beneficiary of the fundraiser, the compensation paid to the individual will be treated as compensation for the services provided and, therefore, as a contribution to the candidate or other beneficiary. The determination that the compensated individual performed, for the benefit of the candidate or other beneficiary, services that ought to be treated as compensated services, will be made on the basis of the facts and circumstances of each case.

This is a formal opinion of the State Elections Board, issued pursuant to §5.05(6), Stats.