

El. Bd. Op. 78-5 (Reaffirmed 8/27/08)

Summary:

Effect of Exceeding Personal Contribution Limit on Eligibility for Public Financing: A candidate who has exceeded the limit on contributions to his own campaign after October 21, 1978 is ineligible to receive a public financing grant, even if the candidate's committee reimburses him for the excess amount. §§11.50 (2)(b), 11.26 (10), Stats. (Issued to David M. Travis, May 18, 1978)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on August 27, 2008

Opinion:

You have requested a formal opinion of the Elections Board on the question of whether an applicant for a public financing grant who exceeds the limit on contributions to his or her own campaign may nevertheless be eligible for a grant if the amount by which the contribution exceeds the limit is returned.

Section 11.50 (2)(b), sets out a number of conditions which must be met before the Elections Board can certify a candidate as eligible for a grant. Among these is a requirement that the candidate make timely application, and the candidate's financial reports filed as of the primary "indicate that his or her statement filed with the application ... is true."

This language refers to the candidate's sworn statement, filed in applying for a grant, that the contribution limit on §11.26 (10), Stats., and the disbursement limits in §11.31, Stats., have been met and will continue to be met at all times to which they have applied or will apply. The limit in §11.26 (10), Stats., prohibits contributions from property or funds of the candidate, or from property or funds held jointly with the candidate's spouse, of more than 200% of the amount another individual could permissibly contribute under §11.26 (1), Stats.

The limit in §11.26 (10), Stats., took effect on October 21, 1977. Ch. 107, Laws of 1977. Prior to that time, a candidate's contributions to his or her own campaign were unlimited. Buckley v. Valeo, 96 S. Ct. 612; 65 Op. Atty. Gen. 145.¹Hence a candidate's contribution in excess of the current §11.26 (10), Stats., limit would not effect eligibility for a grant if made prior to October 21, 1977. However, if made after that time, it would impeach the candidate's statement in the application for grant that he or she has complied with the §11.26 (10), Stats., limit at all times for which it has applied, thereby preventing the candidate from meeting one of the conditions necessary to obtain a grant.

¹ For those who do not seek a public financing grant, there is still no limit on contributions to one's own campaign.

If the limit in §11.26 (10), Stats., is transgressed after its effective date, the candidate cannot salvage eligibility for a grant by securing reimbursement of the excess contributed. Unless a contribution is returned within 15 days of its receipt, it is "received and accepted" as of the day of its receipt. §11.06 (4)(b), Stats. Receipt and acceptance of a contribution which exceeds the applicable limits constitutes noncompliance with that limit, even if reimbursement is subsequently made. See GAB 1.25, Wis. Adm. Code. And, as indicated above, noncompliance with the limit on personal contributions in §11.26 (10), Stats., is fatal to a candidate's attempt to secure a public financing grant.

The Board recognizes that this application of the requirements for public financing may produce some unfortunate results, but the conditions of eligibility for public financing are mandatory and not subject to adjustment by the Board.

Finally, the Board points out that a public financing applicant who files a statement that he has not exceeded the limits in §§11.26 (10) or 11.31, Stats., may be guilty of violating prohibitions against the filing of false statements if that statement is not true. §§11.27 (1); 946.32, Stats.