

El. Bd. Op. 88-4 (Reaffirmed 10/6/08)

Summary:

The exclusion set out in §11.29(1), Stats., and the application of Wisconsin's campaign finance disclosure law is limited to communications from an organization to its members to the exclusion of all others for the purpose of communicating endorsements of candidates, positions on referenda or an explanation of the organization's views and interests. The funding of such communications must be paid for by the organization.

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on October 6, 2008.

Opinion:

You have requested the Elections Board to issue a formal opinion under the provisions of §5.05(6), Stats., relating to the application of §11.29(1), Stats., to communications by an organization to its membership at the request or suggestion of a candidate. Your opinion request does not describe the nature of the request or suggestion by the candidate to the organization. More importantly your request does not describe the nature of the communication to be made to the membership by the organization.

Wisconsin law clearly permits any organization to make communications to its membership. Communications of a political nature which consist of endorsements of candidates, positions on a referendum or an explanation of the organization's views or interests are not subject to the registration and reporting requirements of Chapter 11, Stats. This is provided that the communications are funded solely by the organization and the communications are limited to the members of the organization to the exclusion of all others. §11.29(1), Stats.

Communications of a political nature which go beyond the scope articulated in §11.29(1), Stats., would be subject to the registration and reporting requirements of Chapter 11. If the political communications are done in cooperation or consultation with, in concert with, or at the request or suggestion of a candidate, the communications will be subject to the contribution limits of Chapter 11. The communications must, be restricted to the membership to the exclusion of all others or be subject to applicable contribution limits under the requirements of Chapter 11, Stats.

Communications beyond the exclusions articulated in §11.29(1), Stats., which are done independently of the candidate would be subject to the registration and reporting requirements set out in §§11.05, 11.06(1)(j), (7), 11.12(6), Stats. Of course, communications to members which do not meet the political purpose test under the provisions of §11.01(16), Stats., are not subject to regulation, including the exclusion set out in §11.29(1), Stats.

Wisconsin law prohibits corporations and cooperatives and unregistered organizations from engaging in political activity. §11.38(2), Stats. The exclusions of §11.29 (1), Stats., provide an exemption from those requirements.

The exclusion from disclosure of communications with respect to endorsements and an explanation of the organization's views or interests is designed to permit otherwise political communications by an organization because it does not reach out to the general public. Although the communications may be designed to influence voting, or even expressly advocate the election or defeat of clearly identified candidates, the communications are not subject to disclosure because the audience and the activity are restricted.

If a candidate requests the organization to communicate to its membership, the organization may inform its membership of candidate endorsements and an explanation of its views or interests. The views and interests of the candidate do not qualify for the exclusion from disclosure except to the extent that the organization utilizes them in its explanation of its views and interests. To the extent that communication of the candidate's views and interests go beyond the statutory exclusion they are subject to disclosure and limitation under the applicable provisions of Chapter 11, Stats.

The exclusion from registration and reporting is dependent on three factors:

1. The communication emanates from the organization to its membership to the exclusion of all others;
2. The communication consists of endorsements of candidates, positions on a referendum or an explanation of the organizations views or interests;
3. The communication is paid for by the organization.

Activity which does not meet these criteria does not qualify for the exclusion from registration, reporting and contribution limits established in Chapter 11, Stats. The application of other provisions of the statutes depend on the nature of the activity involved.