
1992 Wis Eth Bd 27
CAMPAIGN ACTIVITIES; LOBBYING AND LOBBYISTS

A political action committee [PAC] that is not controlled by an organization employing a lobbyist, either in law or in fact, may, consistent with laws administered by the Board, make a campaign contribution at any time.

A political action committee controlled, either in law or in fact, by an organization employing a lobbyist may make a campaign contribution only when Wisconsin's lobbying laws permit a lobbying principal to contribute directly. Thus, a PAC controlled by a lobbying principal may contribute to a partisan elective state official or to a candidate for election to a partisan state office or to the personal campaign committee of either only in the year of the candidate's election between June 1 and the day of the general election (and, in the case of a candidate for legislative office, only if the legislature has concluded its final floor period, and is not in special or extraordinary session).

Because the Ethics Board has not previously had an opportunity to address this point, the Board does not intend to prosecute a complaint against any principal which may, in the past, have made, via a PAC, a campaign contribution during a period in which the principal could not contribute.
OEB 92-27

July 9, 1992

Facts

- [1] This opinion is based upon these understandings:
- a. An unincorporated association employs a lobbyist and is a registered principal under the lobbying law.
 - b. The association has established a political action committee ("PAC") through which the association makes political contributions.
 - c. The PAC is not a separate legal entity and is governed by the association.

Question

- [2] The Ethics Board understands your question to be:

What restrictions, if any, does the lobbying law impose on the PAC's ability to make campaign contributions?

Discussion

[3] Wisconsin's lobbying law prohibits an organization that employs a lobbyist (a "principal") to furnish campaign contributions to partisan elective state officials or to candidates for partisan elective state office except during the period June 1 to the date of the general election in the year of such election.¹ The issue is whether a principal's political action committee is also subject to this restriction.

[4] The analysis of this issue must start with the basic, common sense proposition that the lobbying law prohibits a principal from doing indirectly that which it is prohibited from doing directly.² Not only may a principal itself not make a prohibited contribution, it may not make a prohibited contribution through another.

[5] An argument can be made that a political action committee registered with, and recognized by, the Elections Board should, for that reason alone, be regarded as an entity separate from the organization establishing that

¹ §13.625(1) and (2), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

(a) Instigate legislative or administrative action for the purpose of obtaining employment in support or opposition thereto.

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.

2. Transportation.

3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

(d) Contract to receive or receive compensation dependent in any manner upon the success or failure of any legislative or administrative action.

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

² See, e.g., 1991 Wis Eth Bd 08. See also Op. Atty. Gen. 9-92 (March 23, 1992).

committee. Indeed, the Elections Board apparently recognizes PACs for record-keeping purposes as entities separate from the organizations of which they may be a part.

[6] In our view, a political action committee may not be viewed as an entity separate from the lobbying principal of which it is a part merely because it is registered as a political committee with the Elections Board. The campaign finance statutes administered by the Elections Board focus in large measure on reporting, and are intended to force clear identification of sources of campaign funds. For this reason, those statutes require establishment of a segregated account and the identification of those responsible for disbursement of funds in that account. But this alone does not give a PAC a separate legal identity.³ A determination that a PAC is entitled to make contributions which a principal cannot, merely because the principal establishes a separate checking account and provides appropriate information to the Elections Board, or even establishes a separate PAC organization, would exult form over substance. Since the laws administered by the Elections Board virtually compel the creation of a political action committee by any organization that plans to make political contributions (and certainly most organizations involved in making political contributions do so through PACs) any other approach by the Ethics Board would make the lobbying law's restrictions on principal campaign contributions virtually meaningless.

[7] Moreover, the Ethics Board must look to the totality of the circumstances in determining whether a particular PAC is truly independent of a principal subject to the lobbying law or, rather, is merely its alter ego. Simply establishing a separate organization while channeling funds through that organization or controlling its disbursements cannot insulate a principal from the lobbying law's restrictions. To hold otherwise would be to ignore reality and permit a principal to do indirectly exactly that which the law prohibits it from doing directly.

[8] You have argued that the Secretary of State, when that office administered the lobbying law, in formal opinion number 27 (October 27, 1981), "determined that the contributions of a union's PAC are not attributable to the union itself for purposes of determining whether the union has violated §13.625, stats." We do not read the Secretary of States formal opinion 27 to stand for that proposition. In that opinion, the facts, as stated by the Secretary of State, were, *inter alia* that the principal maintained a "separate" political action committee. It is unclear from the opinion itself

³ Political action committees are required to register with the Elections Board pursuant to §11.05(1), *Wisconsin Statutes*. In order to attain the status of a political action committee under campaign finance laws, the statutes generally require only the establishment of a segregated account and identifying information concerning the PAC. §11.05(3), *Wisconsin Statutes*. The campaign financing laws do not impose any structural requirements on political action committees nor any restrictions on the manner in which such committees make decisions to make campaign contributions. Campaign financing laws permit a PAC's sponsor to pay all administrative expenses of the PAC and up to \$500/year for costs of soliciting contributions.

what, if any, other facts the Secretary of State relied upon in making the determination that the PAC in question was “separate” from the principal. Moreover, in a subsequent informal opinion dated July 20, 1987, the Secretary of State indicated that

[o]ur office’s primary concern when a lobbying organization (“principal”) has an associated political action committee (“PAC”) is that the PAC will be used simply to circumvent the lobby law restrictions on campaign contributions. It is our position that a PAC should be organized as a separate entity and should not receive funds directly from the organization. If a PAC is nothing more than a separate checking account or a mere conduit for funds, it cannot be distinguished under the lobby law from the principal itself.

[9] We agree. Indeed, in a similar context, the Ethics Board has held that a lobbyist could not use funds from the lobbyist's personal campaign committee, established when the lobbyist was a legislator, to make campaign contributions during periods prohibited to the lobbyist himself.⁴

[10] In our view a principal may not make a campaign contribution prohibited by the lobbying law through a PAC that is not a separate legal entity or through any PAC in which the principal exercises control, in law or in fact, either generally (as, for example, through designation of a PAC's directors or through an intentional commonality of directors) or specifically over any disbursement, as of any monies furnished by the principal.⁵ This ruling does not affect the ability of principals to continue to establish or operate conduits⁶ or the ability of a PAC to make contributions as otherwise permitted by the lobbying law.

Advice

[11] A political action committee that is not controlled by an organization employing a lobbyist, either in law or in fact, may, consistent with laws administered by the Board, make a campaign contribution at any time.

[12] A political action committee controlled, either in law or in fact, by an organization employing a lobbyist may make a campaign contribution only when Wisconsin's lobbying laws permit a lobbying principal to contribute directly. Thus, a PAC controlled by a lobbying principal may contribute to a partisan elective state official or to a candidate for election to a partisan state office or to the personal campaign committee of either only in the year of the candidate's election between June 1 and the the day of the general election

⁴ 1991 Wis Eth Bd 08.

⁵ Put another way, a PAC may not escape the restrictions of the lobbying law merely by existing as a finger on the hand of the principal or by being a hand puppet.

⁶ See 1992 Wis Eth Bd 18.

(and, in the case of a candidate for legislative office, only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session).

[13] Because the Ethics Board has not previously had an opportunity to address this point, the Board does not intend to prosecute a complaint against any principal which may, in the past, have made, via a PAC, a campaign contribution during a period in which the principal could not contribute.