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**1992 Wis Eth Bd 29**  
LOBBYING AND LOBBYISTS

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The Ethics Board advises that the lobbying law's restrictions on the timing of campaign contributions applies to a lobbying principal whether the principal is a corporation or an unincorporated association. A principal is subject to the lobbying law's restrictions on campaign contributions whether it makes a contribution directly or through its alter ego or agent, such as a PAC. Corporate lobbying principals that have created and registered PACs under §11.38, *Wisconsin Statutes*, may utilize those PACs to make campaign contributions to the full extent permitted under campaign finance laws and within the time periods permitted under Wisconsin's lobbying statute. Businesses, organizations, and individuals that are not lobbying principals are free to make campaign contributions through their PACs without restraint from laws administered by the Ethics Board. OEB 92-29  
November 18, 1992

Facts

- [1] This opinion is based upon these understandings:
- a. You are a paid, licensed lobbyist retained to attempt to influence the actions of Wisconsin's Legislature.
  - b. You are the authorized lobbyist for a lobbying principal that has established, and currently sponsors and administers a separate fund to be used to support or oppose candidates for state or local office. Other members of your firm are the authorized lobbyists for another lobbying principal that has created, and currently sponsors and administers, such a fund.
  - c. You write on behalf of these two funds, known as political action committees or PACs, as well as on behalf of another PAC also created, sponsored, and administered by a lobbying principal.
  - d. The lobbying principals have created the PACs for the purpose of furnishing campaign contributions to candidates for elective state office.
  - e. Each corporation has established and registered its PAC pursuant to §11.38, *Wisconsin Statutes*.
  - f. You assert that each PAC is a voluntary association of individuals which, although established by a related corporation, functions independently of the corporation and under the exclusive direction of its own governing body.

## Questions

[2] The Ethics Board understands your questions to be:

1. May a principal that is a corporation avoid the lobbying law's timing restrictions on campaign contributions by establishing a segregated fund, often called a political action committee, for the purpose of furnishing campaign contributions?
2. Are the specific political action committees about which you write subject to the lobbying law's restrictions on the timing of campaign contributions?

## Discussion

[3] May a principal that is a corporation avoid the lobbying law's timing restrictions on campaign contributions by establishing a segregated fund, often called a political action committee, for the purpose of furnishing campaign contributions?

[4] Wisconsin's lobbying law specifically permits 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, but only during specific periods of time.<sup>1</sup> This is a limited exception to

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<sup>1</sup> §13.625(1)(intro.), (b)3., (c), and (2), *Wisconsin Statutes*, provides:

**13.625 Prohibited practices. (1)** No lobbyist may:

(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:

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.

**(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,

a sweeping prohibition on a principal's furnishing anything of pecuniary value to state officials. A principal may not avoid the lobbying law's time restrictions through an alter ego merely by creating, registering, and administering a fund as a segregated fund (often called a "political action committee" or "PAC") and furnishing contributions through that mechanism.<sup>2</sup> Of course, businesses and trade and professional organizations that do not employ lobbyists may, without restraint from laws administered by the Ethics Board, freely make campaign contributions either themselves or through their PACs.

[5] We previously offered the foregoing observations in response to questions asked by a principal that was an unincorporated association. You have asked whether the opinion applies as well to principals that are incorporated.

[6] You argue that lobbying principals that are corporations should be treated differently from labor unions, citizen associations and other unincorporated principals because: corporations are prohibited by campaign finance laws from making campaign contributions except through PACs; because PAC funds are required to come from individuals and not the corporation; and because, you argue, it was the intent of the Legislature to permit principals that are corporations to make campaign contributions that would otherwise violate the lobbying law simply by establishing PACs. These arguments are not persuasive. After consultation with the Department of Justice, we see no basis in law for carving out a special exception for corporations by exempting principals from the lobbying law's restrictions merely because the principals are organized as corporations.

[7] First, there is simply no basis in law or public policy for treating corporate principals differently from principals organized on some other legal basis. The interpretation you urge would permit a corporation to escape the lobbying law's restrictions by the simple expedient of establishing and registering a separate, segregated fund with the Elections Board -- the very issue we addressed in our prior opinion.<sup>3</sup> It is true, as you point out, that corporations may make campaign contributions only through PACs, but this is of no significance because the result of our opinion is that *all* principals are permitted to make campaign contributions during permitted time periods,

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lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

<sup>2</sup> 1992 Wis Eth Bd 27. It is well-settled that one may not furnish indirectly what one is prohibited from furnishing directly. See 81 Op. A.G. \_\_ (OAG 9-92, March 23, 1992); *State v. Graves*, 257 Wis. 31 (1950).

<sup>3</sup> The views expressed in both this opinion and our prior opinion, 1992 Wis Eth Bd 27, are of long standing and are, in part, drawn from the views taken by the Office of the Secretary of State when that office administered the lobbying law. In an informal opinion of July 20, 1987, addressed to a corporate principal, the Secretary of State's office stated that "a PAC should be organized as a separate entity" and that "[i]f a PAC is nothing more than a checking account or a mere conduit for funds, it cannot be distinguished under the lobby law from the principal itself."

whether through a PAC or other procedure, and *no* principal is permitted to make a contribution during a prohibited time period, whether through a PAC or other procedure. Any other result would create a distinction among lobbying principals based arbitrarily and capriciously on organizational structure.

[8] Significantly, the lobbying law does not affect the ability of a corporate principal to furnish, through a PAC, the maximum campaign contributions permitted under campaign finance laws to candidates in a general election. In essence, the lobbying law merely requires that those contributions to partisan candidates be made during the five months prior to the general election, when the Legislature is not in session. And while it is true that principals may be curtailed from making campaign contributions to partisan elected officials, or candidates for partisan office, running for office in the spring or special elections, that is a policy decision expressly made by the Legislature.<sup>4</sup> If you believe that either of these policies should be changed, it is to the Legislature that you must turn.

[9] Second, that an organization's funds for political contributions come from another source does not make a difference if the organization has control of those funds; indeed, every organization's money ultimately comes from an outside source. This is recognized elsewhere in the law, in the campaign finance statutes. Those statutes distinguish between conduits, in which individual contributors determine the recipients of their contributions, and PACs. Conduit contribution reporting requires identification of each individual contributor, PAC contribution reporting requires only identification of the PAC. Any other view would permit a principal to seek contributions to an entertainment fund, for example, and use those monies for the provision of food and drink to state officials, something that a principal is expressly forbidden to do.

[10] Third, there simply is no warrant in the legislative history for treating principals differently simply because of their organizational structure. Prior to enactment of §11.38, *Wisconsin Statutes*, which permits corporations to make campaign contributions through PACs, corporations were prohibited under Wisconsin law from making such contributions at all.<sup>5</sup> You have

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<sup>4</sup> See Wisconsin Legislative Council Report No. 1 to the 1987 Legislature, p. 13; Analysis by the Legislative Reference Bureau, 1989 Assembly Bill 611 and Engrossed 1989 Assembly Bill 611 ("The bill: 1. Extends the prohibition against making campaign contributions to candidates for partisan elective state offices at a special election, except during the period when contributions are authorized.").

<sup>5</sup> Section 11.38(1), *Wisconsin Statutes*, provides:

**11.38(1)(a)1.** No foreign or domestic corporation, or association organized under ch. 185, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum.

2. Notwithstanding subd. 1, any such corporation or association may establish and administer a separate segregated fund and solicit contributions from individuals to the fund to be utilized by such corporation or association,

provided no evidence that when the Legislature created a new exception permitting corporate political contributions, it intended to carve out an additional and implicit exception to the lobbying law. Indeed, the Legislature is presumed to have known of the prohibition in the lobbying law when it created the new corporate exception in §11.38 of the campaign finance laws. The campaign finance laws affect approximately 130,000 corporations incorporated in Wisconsin. The lobbying law applies only to about 200 corporations that pay lobbyists to try to influence state officials' creation, repeal, and amendment of statutes and rules. If the Legislature had intended specifically to affect the lobbying law's application to this relative handful of corporations it would have done so expressly.

[11] In summation, the lobbying law makes specific allowance for a principal's furnishing contributions to candidates during specific time periods. There is no basis in law or policy, and nothing in the language of §13.625, that would permit the Ethics Board to create an additional exemption releasing corporations from the lobbying law's prohibition on principals' furnishing items of pecuniary value to state officials. Moreover, there is no indication in the legislative history that Chapter 11's general statute affecting all corporations was ever intended to change the law for those few corporations (fewer than 1/2 of 1%) that have voluntarily brought themselves under the jurisdiction of the statutes governing the payment of agents to try to influence public officials. Furthermore, there is nothing in the legislative history that indicates that the specific statute establishing the time period during which organizations employing lobbyists may contribute to partisan political campaigns should somehow be understood to apply only to the 450 trade, professional, and citizen associations that employ lobbyists but not to the 200 corporations that do the same.

Are the specific political action committees about which you write subject to the lobbying law's restrictions on the timing of campaign contributions?

[12] As the above discussion makes clear, the lobbying law makes no provision for a principal to circumvent the statute's timing restraints on furnishing a campaign contribution merely by furnishing that contribution

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for the purpose of supporting or opposing any candidate for state or local office but the corporation or association may not make any contribution to the fund. The fund shall appoint a treasurer and shall register as a political committee under s. 11.05. A parent corporation or association engaging solely in this activity is not subject to registration under s. 11.05, but shall register and file special reports on forms prescribed by the board disclosing its administrative and solicitation expenses on behalf of such fund. A corporation not domiciled in this state need report only its expenses for administration and solicitation of contributions in this state together with a statement indicating where information concerning other administration and solicitation expenses of its fund may be obtained. The reports shall be filed with the filing officer for the fund specified in s. 11.02 in the manner in which continuing reports are filed under s. 11.20(4) and (8).

3. No corporation or association specified in subd.1 may expend more than a combined total of \$500 annually for solicitation of contributions to a fund established under subd. 2 or to a conduit .

through a PAC. Businesses and organizations that are not lobbying principals are, of course, under no restraint from the lobbying law in furnishing contributions through their PACs. Whether a PAC is a segregated fund utilized by a corporate lobbying principal to furnish campaign contributions or is separate and independent of the principal is a question of fact.

[13] A significant circumstance in the case of the PACs about which you write is their status as corporate PACs under campaign finance laws. Campaign finance laws governing corporate contributions provide that a "corporation or association may establish and administer a separate segregated fund and solicit contributions from individuals to the fund to be utilized by such corporation or association, for the purpose of supporting or opposing any candidate for state or local office but the corporation or association may not make any contribution to the fund."<sup>6</sup> It is difficult to reconcile your assertion that a PAC is an independent, voluntary association with the fact that the PAC is established by a corporation to be utilized by such corporation for furnishing contributions, pursuant to §11.38. Indeed, §11.38 presumes the corporation is the real party in interest making contributions through a segregated fund.<sup>7</sup>

#### Advice

[14] The Ethics Board advises that the lobbying law's restrictions on the timing of campaign contributions applies to a lobbying principal whether the principal is a corporation or an unincorporated association. A principal is subject to the lobbying law's restrictions on campaign contributions whether it makes a contribution directly or through its alter ego or agent, such as a PAC. Corporate lobbying principals that have created and registered PACs under §11.38, *Wisconsin Statutes*, may utilize those PACs to make campaign contributions to the full extent permitted under campaign finance laws and within the time periods permitted under Wisconsin's lobbying statute. Businesses, organizations, and individuals that are not lobbying principals are free to make campaign contributions through their PACs without restraint from laws administered by the Ethics Board.

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<sup>6</sup> §11.38(1)(a)2, *Wisconsin Statutes*.

<sup>7</sup> We note that each of the PACs on whose behalf you have sought this opinion are sponsored by principals that submit corporate financial reports to the Elections Board identifying disbursements to the PACs for solicitation and administrative purposes. We note that two PACs receive the bulk of their contributions from employees of the principals through payroll deductions. The third PAC used to receive its contributions in this manner but now receives money from what appears to be the out-of-state PAC of the principal's parent corporation. Finally, we note that with respect to at least one PAC, expenses related to PAC administration are simply charged to a cost center within the principal that sponsors the PAC.