

# State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7984  
Madison, WI 53707-7984  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

## MEMORANDUM

**DATE:** March 15, 2011

**TO:** All Interested Persons and Committees Involved With Recall Efforts

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

**SUBJECT: Recall Expense Funds: Contribution Limits and Residual Funds**

Government Accountability Board staff have received numerous inquiries regarding the limited statutory exemption from contribution limits for recall expenses and how to dispose of residual recall funds upon the termination of a recall circulation effort, determination of insufficiency of a recall petition, or order for recall election and end of challenges and defenses of the order. Each of these three actions can terminate the period to incur recall expenses for which the limited statutory exemption from contribution limits applies. This Memorandum provides further clarification in response to these inquiries and concerns.

### **I. Limited Statutory Exemption from Contribution Limits for Recall Expenses:**

Limitations on contributions are prescribed by §11.26, Wis. Stats., which establishes specific dollar amount or percentage limitations including but not limited to the following:

- Individual contributions (§11.26(1), Wis. Stats.)
- Committee contributions other than from a political party or legislative campaign committee (§11.26(2), Wis. Stats.)
- Calendar year individual aggregate contributions of \$10,000 to all candidates for state or local office, as well as individuals and committees, legislative campaign committees and political parties, whether local or state (§11.26(4), Wis. Stats.)
- Contributions received by political parties (§11.26(8), Wis. Stats.)
- Contributions to candidates from committees, legislative campaign committees, and political parties (§.11.26(9), Wis. Stats.)

However, pursuant to §11.26(13m)(b), Wis. Stats., contributions are not subject to these limitations when utilized for the purpose of payment of legal fees and other expenses incurred in connection with the circulation, offer to file or filing, or with the response to the circulation, offer to file or filing, of a petition to recall an officer prior to the time a recall primary or election is ordered, or after that time if incurred in contesting or defending the order.

Once a recall committee files a registration statement (GAB-1), the exemption from the §11.26, Wis. Stats., contribution limits applies. The exemption from contribution limits only apply up to the total

amount of legal fees and all other expenses incurred in connection with the circulation of a recall petition and challenge or defense of an order for a recall election. Incurring such recall legal fees and other expenses that may be paid from contributions that are exempt from limitations are permitted only until the latest of any of the following:

- The date the recall committee terminates its registration, if such termination occurs prior to the petition having been offered for filing.
- The date the recall petition is determined insufficient or the time period to offer the petition for filing expires.
- The date the recall election is ordered.
- The date any contest or defense of the order for recall election concludes.

Limitations on contributions prescribed by §11.26, Wis. Stats., always apply to all contributions that exceed the amount of incurred legal fees and other expenses of the recall petition circulation and challenge or defense of the order for a recall election.

For purposes of this Memorandum, the latest date as described above shall be identified as the “conversion date,” meaning the date the residual recall funds (those that exceed incurred recall expenses) convert to contributions subject to limitations prescribed by §11.26, Wis. Stats. Upon reaching the conversion date and assuming all incurred recall expenses are satisfied, the limitations on contributions prescribed by §11.26, Wis. Stats., apply to the residual recall funds. However, if incurred recall expenses remain unsatisfied at the conversion date, individuals, committees, legislative campaign committees and political parties may continue to receive contributions exempt from §11.26, Wis. Stats., limitations until sufficient contributions are received to satisfy the recall expenses.

Pursuant to §11.01(16), an act is for “political purposes” when it is done for the purpose of influencing the recall from or retention in office of an individual holding a state or local office. Since contributions for recall legal fees and other expenses are for a political purpose, the remainder of Ch. 11, Wis. Stats., applies, excluding limitations on contributions as set forth above. This exemption from limitations on contributions does not extend to prohibited contributors or other practices as prescribed in Ch. 11, Wis. Stats. For example, corporations or associations organized under Ch. 185 or 193, Wis. Stats., are prohibited from making contributions. See §11.28, Wis. Stats. As another example, making contributions other than from funds or property belonging to the contributor or furnishing funds or property to another person for the purposes of making a contribution in other than the person’s own name are prohibited. See §11.24(1), Wis. Stats. As yet another example, making a disbursement or incurring an obligation with moneys solicited for political purposes for a purpose which is other than political is prohibited, except as authorized by law. See §11.25(2)(a) and (b), Wis. Stats.

In addition, §13.625(1)(c), Wis. Stats., prohibits lobbyist contributions to candidates in a special election and candidates in a General Election (except in the year of a candidate’s election between June 1 through and the day of the General Election). Lobbyists are prohibited from making contributions to partisan elected officials or candidates, even if for recall expenses; however, lobbyists are not prohibited from making contributions to legislative campaign committees, political parties, individuals, recall committees, or other committees, but excluding candidate or personal campaign committees.

## **II. Residual Recall Funds at the Conversion Date**

An act is for “political purposes” when it is done for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, therefore a monetary or in-kind recall donation to an individual, committee, legislative campaign committee, political party or an organization

making independent disbursements (§1.91 organization), constitutes a “contribution.” See §11.01(6)(a) and (16), Wis. Stats. Since contributions used for recall expenses are not subject to limitations prescribed by §11.26, Wis. Stats., individuals, committees, legislative campaign committees, and political parties must keep detailed records and their campaign finance reports must include separate designations for recall contributions and recall expenses.

At the conversion date, recall contributions may exceed recall legal fees and other recall expenses, leaving residual recall funds. Individuals, committees, legislative campaign committees, and political parties have three ways to treat these residual recall funds. Pursuant to §11.06(4)(b), Wis. Stats., individuals, committees, legislative campaign committees, and political parties possessing residual recall funds shall have 15 days from the conversion date to make a determination to accept residual recall funds for campaign use, donate them to a charity or the common school fund, or return the residual recall funds contributions to the original contributors. The action of accepting, donating or returning the residual recall funds must be completed within 15 days from the conversion date.

If residual recall funds are converted for campaign use, the residual recall funds from each donor are subject to the limitations on contributions as prescribed by §11.26, Wis. Stats. Residual recall funds from individuals that are accepted for campaign use apply toward the individual’s \$10,000 aggregate calendar year limitation found in §11.26(4), Wis. Stats. If residual recall funds are converted to campaign use, it is a best practice to notify the original contributor so that it may be taken into account by the contributor when making other contributions during that calendar year. Any contribution from a donor in excess of the permitted limitations on contributions prescribed by §11.26, Wis. Stats., shall be treated as an “excess contribution” and must be donated to a charity or the common school fund, or returned to the original contributor within 15 days of the conversion date. Failure to do so will result in acceptance of an excess contribution and treated as a violation of the limitations on contributions for which the civil and criminal penalties in §§11.60 and 11.61, Wis. Stats., apply.

Upon acceptance of a contribution, individuals, committees, legislative campaign committees, and political parties may designate a portion of a contribution for campaign use (up to the limitations prescribed by §11.26, Wis. Stats.) and the remaining as recall funds. This may provide easier accounting of residual recall funds once recall expenses are satisfied. However, individuals, committees, legislative campaign committees, and political parties may also initially designate contributions as recall funds and later re-designate a portion of residual recall funds for campaign use during the determination period in the 15 days following the conversion date, but only up to the limitations prescribed by §11.26, Wis. Stats. If re-designating residual recall funds to campaign funds, original recall fund contributions shall be treated on a first-in-first out basis for determining which funds may be converted or disposed of.

No individual, committee, legislative campaign committee, or political party may contribute residual recall funds, not first accepted for campaign use, to any other individual, committee, legislative campaign committee, political party, or organization making independent disbursements, even if for another recall effort. Such a donation constitutes a contribution because it is for a “political purpose,” i.e., for the purpose of influencing the recall from or retention in office of an individual holding a state or local office. See §11.01(6)(a) and (16), Wis. Stats. Such a contribution does not qualify for the exemption on limitations on contributions found in §11.26(13m), Wis. Stats., because a “contribution” is not a “legal fee” or “other expense” incurred in connection with the circulation, offer to file or filing, or with the response to circulation, offer to file or filing, of a petition to recall an officer prior to the time a recall primary or election is ordered, or after that time if incurred in contesting or defending the order.