

Joint Committee for Review of Administrative Rules

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- CR 05-061

Report to the Legislature Clearinghouse Rule 05-061

The Joint Committee for Administrative Rules

Produced pursuant to 227.19(6)(a), Stats.

Clearinghouse Rule 05-061, promulgated by the Wisconsin State Elections Board, sought to compel disclosure of any missing contributor information on campaign finance reports.

Description of the Problem

Wisconsin Statutes, section 11.06, sets forth the requirements for candidates' financial reports to be filed with the Elections Board. 11.06(b) requires the report to detail "the occupation and name and address of the principal place of employment, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of \$100." 11.06(5) says "a registered individual or treasurer....shall make a **good faith effort** to obtain all required information."

At its March 10, 2004 meeting, the Elections Board voted to adopt a new policy and rule requiring the reporting of any missing contributor information that has not been provided within 45 days after the due date for the report. At its May 19, 2004 meeting, the Board proposed the rule be redrafted to treat any contribution greater than \$250 to be illegal unless the information is disclosed within 45 days of the due date of the report. If the registrant has disclosed the required information within 45 days, they will be considered to have made a "good faith effort". If they do not disclose the information in 45 days, the Board will notify the registrant and notify the recipient that contribution may

not be accepted or received, and it must be returned to the contributor, or paid to the commons school fund or to a recognized charity.

The Board modified the rule once more, saying a registrant shall notify the filing officer of all contributor information no later than 60 days after the due date for the report. If a registrant provides the information or returns the contribution to the contributor within 60 days of the due date, they will be determined to have made a good faith effort under 11.06(5), Stats. A registrant who does not disclose the information and does not return the contribution within 60 days of the due date shall be determined to have failed to show good faith, and will be required to divest itself of all such contributions.

On November 2, 2005, the Senate Labor and Election Process Reform Committee passed a motion requesting modifications to CR05-061, expressing concerns about the statutory authority of the rule. On March 23, 2006 Elections Board declined to make modifications suggested by the Senate Labor and Election Process Reform Committee, and the Committee objected to the rule on the grounds of Statutory Authority.

Arguments in Favor of Objection

- The rule goes beyond the Election Board's statutory authority.
- It replaces the "good faith standard" in 11.06(5) with a mandatory reporting requirement standard.
- The rule is arbitrary and capricious.
- Under the new rule, two different standards will be required for contributions over a \$100 dollars. The same information will be required for contributions from \$100 through \$250, and contributions greater than \$250. However, only contributions over \$250 would have to be divested if the information is not disclosed within 60 days of the due date of the report.
- If the Elections Board enforced current law, this rule would be unnecessary.

Arguments Against Objection

- The rule provided a "brighter line test of compliance" of good faith.

- The rule guarantees that required information be supplied, and if not, that the contribution is returned.

Action by Joint Committee for Administrative Rules

On May 16, 2005, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing and executive session on CR 05-061. JCRAR concurred with the objection of the Senate Committee on Labor and Election Process Reform and passed the motion on 10-0 vote, pursuant to 227.19 (4) (d)6 and (5)(d), Stats., to object to Clearinghouse Rule 05-061 on the basis of an absence of statutory authority and it was arbitrary and capriciousness, or imposed an undue hardship. On June 14, 2006, JCRAR voted 10-0 to introduce LRB 5034 and LRB 5035 to prevent promulgation of CR 05-061.