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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2007-08**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Elections and Constitutional Law  
(AC-ECL)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)
  - (**ajr** = Assembly Joint Resolution)
  - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



**LEAGUE OF WOMEN VOTERS®  
OF WISCONSIN, INC.**

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Madison, WI 53703-2500

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Fax: (608) 256-1761

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[lwwisconsin@lwwi.org](mailto:lwwisconsin@lwwi.org)

March 21, 2007

To: Assembly Committee on Elections and Constitutional Law

Re: Opposition to AJR 30 and AJR 31

The League of Women Voters of Wisconsin is opposed to AJR 30 and AJR 31 as inappropriate subjects for constitutional action.

In Wisconsin, the Supreme Court by rule requires all practicing attorneys to belong to the State Bar of Wisconsin and pay bar dues. A portion of those bar dues is used to provide legal services to the indigent.

Practicing attorneys must complete thirty hours of continuing legal education in specified time periods and the Bar Association is the venue for much of that legal education. This continuing education requirement, as it does in other licensed professions, provides a level of quality assurance for consumers.

The League has long supported the public defender program in the criminal justice system but there are many other legal issues confronting the poor. The portion of the bar dues going to support legal services to indigents must be viewed as an appropriate expenditure, since surely attorneys understand the importance of quality legal representation, especially for those who have no resources.

The citizens of the state of Wisconsin would not be well served by enactment of AJR 30 and AJR 31.





STATE BAR of  
WISCONSIN\*

**WISCONSIN  
LAWYERS**

EXPERT ADVISERS.  
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## MEMORANDUM

**To:** Assembly Committee on Elections and Constitutional Law

**From:** Atty. John Walsh, Chair  
Legislative Oversight Committee  
State Bar of Wisconsin

**Date:** March 22, 2007

**Re:** State Bar of Wisconsin opposition to AJR 30 (WisTAF Assessment)

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The State Bar of Wisconsin opposes Assembly Joint Resolution 30, which would amend the Wisconsin Constitution to prohibit the Wisconsin Supreme Court from assessing a fee to licensed attorneys to fund either civil or criminal legal services for the poor.

The vote two weeks ago by the State Bar's Board of Governors to oppose this proposed constitutional amendment was overwhelming, in fact almost unanimous. In November 2004, when the Board of Governors voted to oppose the creation of the current mandatory WisTAF assessment to fund civil legal services for the poor, that vote was also overwhelming. (Instead, in 2004 the Board of Governors urged the creation of a two-year \$50 assessment that members could opt out of if they wished.)

As you can see from these two votes, our opposition to this proposed constitutional amendment has little to do with the merits of the mandatory WisTAF assessment. Rather, our opposition to this proposed constitutional amendment is that this is an inappropriate and unnecessary vehicle for addressing this issue.

There are strong arguments both for and against the current mandatory WisTAF assessment. We believe, however, that the merits or wisdom of the WisTAF assessment are not at issue here. Rather, the issue here is an unnecessary and unwise effort to curtail the authority of the judicial branch of government to regulate the practice of law.

We need not and should not amend the state constitution for the benefit of the State Bar members who currently pay the mandatory WisTAF assessment, including some members of this committee. Further, I find it highly unlikely that, if asked to do so by the Legislature, the people of Wisconsin will vote to relieve lawyers of the obligation to pay for civil legal services for the poor.

Since the founding of our state, the regulation of the practice of law has been vested in the judicial branch of government. Today, Article VII, Section 3 of the Wisconsin Constitution grants to our Supreme Court superintending and administrative authority over all courts in our state. Our state constitution grants the Wisconsin Supreme Court power to adopt measures necessary for the due administration of justice in the state. *State v. Holmes*, 106 Wis. 2d 31, 44,

**State Bar of Wisconsin**

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315 N.W.2d 703 (1982). The regulation of the practice of law has always been vested in the judicial branch. That authority should be respected as fundamental to our tripartite and republican form of government, in which the judiciary is a separate but fully equal branch of government.

The Supreme Court imposes a number of fees and assessments on licensed attorney in this state. Some assessments – such as those that fund the Office of Lawyer Regulation – are directly related to the regulation of the practice of law. The WisTAF assessment is perhaps most similar to the assessment State Bar members pay to the Wisconsin Lawyers' Fund for Client Protection, which is intended to make whole consumers who are financially harmed by the dishonest conduct of an attorney. The WisTAF assessment, like the Fund for Client Protection, reflects the Supreme Court's recognition of the shared responsibility that all lawyers have to fulfill the moral obligations of the profession.

It is not necessary to amend our state constitution to appease those State Bar members who object to paying the WisTAF assessment. What other group of professionals have been the beneficiary of such favorable treatment by this Legislature?

Several adequate alternatives to amending our state constitution are available to opponents of the mandatory WisTAF assessment. Any State Bar member can petition the Supreme Court for modification or repeal of the assessment. In fact, at the same meeting two weeks ago at which the Board voted to oppose this proposed constitutional amendment, the Board also approved the filing of a petition to the Supreme Court seeking several modifications of the assessment, including allowing Bar members the option of giving money to legal aid organizations other than WisTAF and requiring judges – who are currently exempt – to also pay the assessment.

In addition to petitioning the court directly, any State Bar member, or the State Bar itself, could also choose to fight the WisTAF assessment via litigation. To date, that has not happened.

Finally, under the Supreme Court Rules that govern the State Bar of Wisconsin, any member has the right to initiate a referendum of State Bar membership by filing a petition bearing the signature of 1,000 Bar members. Such a referendum can seek the opinion of the membership on any matter of public policy of concern to the Bar. To date, no opponent of the WisTAF assessment has chosen to seek a referendum of State Bar members either.

Given the entire range of options available to those State Bar members who feel aggrieved by the current WisTAF assessment, it is gross overreaching to seek to amend the state constitution for the benefit of those members.





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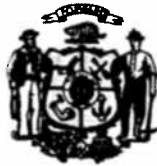
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# State of Wisconsin\Government Accountability Board

Ethics & Accountability Division  
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KEVIN J. KENNEDY  
Legal Counsel

January 29, 2008

Representative Sheryl Albers  
State Capitol, Room, 115 West  
Madison, WI INTER-D

AJR 30

Dear Representative Albers:

We write in answer to your e-mail dated January 17, 2008, by which you sought the Government Accountability Board's advice.

## General Information

Wisconsin law provides that no person acting in good faith upon an advisory opinion issued by the Board is subject to criminal or civil prosecution for so acting. If this opinion misstates or omits a material fact or fails to respond adequately to your inquiry, please write or call the Government Accountability Board to request a supplemental opinion.

Wisconsin law requires the Government Accountability Board to publish a summary of this opinion after the Board has altered it to prevent disclosing the identities of the people involved. No member or employee of the Board may publicly identify you as the person who requested this opinion or identify a person involved in this opinion without obtaining your consent; however, if you make public or purport to make public the substance of or any portion of this opinion, you waive the confidentiality of your request and of records obtained or prepared by the Board in connection with your request.

## Facts

You are a member of the legislature and a lawyer. Currently, the Wisconsin Supreme Court requires lawyers licensed in Wisconsin to pay an annual assessment of \$50.00 to provide legal services to the indigent. Before the Assembly for consideration is 2007 Assembly Joint Resolution 30. This Joint Resolution is a proposed constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for such legal services.

## Question

You ask whether laws administered by the Government Accountability Board restrict your participation in the consideration and vote on Assembly Joint Resolution 30.

## Discussion

The provision of Wisconsin's Ethics Code that is most pertinent to your question is §19.45 (2), *Wisconsin Statutes*.<sup>1</sup> This section, reduced to its elements, provides that:

No state public official  
may use his or her public position or office  
to obtain financial gain or anything of substantial value  
for the private benefit  
of the official.<sup>2</sup>

You are a state public official by virtue of being a member of the Legislature.<sup>3</sup> For many years, the Ethics Board defined "substantial value" as anything of more than token or inconsequential value.<sup>4</sup> We see no reason to depart from this understanding. We conclude that \$50 is not a nominal or inconsequential amount.<sup>5</sup> Assembly Joint Resolution 30 would create a direct, measurable financial benefit for you. Nevertheless, you may participate in its consideration.

The Ethics Code, at §19.45 (1), *Wisconsin Statutes*, provides, in relevant part:

**19.45 Standards of conduct; state public officials. (1)** . . . The legislature . . . recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; . . . that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or

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<sup>1</sup> Section 19.46 (1), *Wisconsin Statutes*, does not apply. This provision, which more broadly prohibits an official from taking any official action substantially affecting a matter in which the official has a substantial financial interest, does not "prohibit a state public official from taking official action with respect to any proposal to modify state law." §19.46 (2), *Wisconsin Statutes*.

<sup>2</sup> Section 19.45 (2), *Wisconsin Statutes*, provides:

**19.45 Standards of conduct; state public officials. (2)** No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

<sup>3</sup> Section 19.42 (13) (c), *Wisconsin Statutes*.

<sup>4</sup> See, e.g., 2007 Wis Eth Bd 05; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

<sup>5</sup> A good rule of thumb is that an amount of money or an item or service has substantial value if a reasonable person would care about retaining it.

may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

In recognition of this statutory policy, the Ethics Board consistently held that, even if an official has a substantial financial interest in a legislative matter, the official may still participate in the matter's consideration, as long as:

- A. The official's action affects a whole class of similarly-situated interests;
- B. The official's interest is insignificant when compared to all affected interests in the class; and
- C. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class.<sup>6</sup>

The Ethics Board developed this test in recognition that the law favors an official's exercise of the official's public duties. As the Attorney General has put it, "A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner."<sup>7</sup>

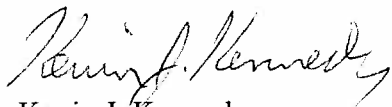
We adopt this test. We further believe that your interest in the subject of the Joint Resolution is insignificant when compared to the entire class of 15,000 licensed Wisconsin lawyers all of whom would be equally affected by the proposal.

#### Advice

The Government Accountability Board advises that you may participate in the consideration and vote on 2007 Assembly Joint Resolution 30.

Sincerely,

WISCONSIN GOVERNMENT  
ACCOUNTABILITY BOARD



Kevin J. Kennedy  
Legal Counsel

KJK:jb  
RA2

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<sup>6</sup> See, e.g., 2007 Wis Eth Bd 10; 1992 Wis Eth Bd 22 ¶6-8; 1990 Wis Eth Bd 20 ¶4; 9 Op. Eth. Bd. 45 (1987); 8 Op. Eth. Bd. 38 (1985); 5 Op. Eth. Bd. 90 (1982); 4 Op. Eth. Bd. 104 (1981).

<sup>7</sup> 36 Op Att'y Gen 45 (1947). See also *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879).