

2005-06 SESSION

COMMITTEE HEARING RECORDS

Assembly Committee on Campaigns & Elections (AC-CE)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **05hr_AC-CE_Misc_pt05**

➤ Record of Comm. Proceedings ... RCP

➤ **

State of Wisconsin \ Elections Board

Post Office Box 2973
17 West Main Street, Suite 310
Madison, WI 53701-2973
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: seb@seb.state.wi.us
<http://elections.state.wi.us>



JOHN C. SCHOBERT
Chairperson

KEVIN J. KENNEDY
Executive Director

MEMORANDUM

TO: ELECTIONS BOARD MEMBERS

FROM: GEORGE A. DUNST, LEGAL COUNSEL

MEETING DATE: DECEMBER 1, 2004

SUBJECT: AUDIT PROCEDURES APPLICABLE TO COMMITTEES WHOSE CAMPAIGN FINANCE REPORTS DO NOT INCLUDE ALL THE INFORMATION REQUIRED TO BE REPORTED BY S.11.06, STATS.

At the Board's December 10, 2003 meeting, the Board reviewed and dismissed the complaints of Mike McCabe against the campaign committees of Governor James Doyle and Speaker John Gard. The complaints alleged that the campaign finance reports of the campaign committees failed to report information required by s.11.06(1)(b), Stats. The Board dismissed the complaints after finding that the campaign committees had each made a good faith effort to obtain the missing information, but the Board charged its staff to propose a change in audit procedure, (with respect to the failure to supply information required under ss.11.06(1)(a) and (b), Stats.), that could culminate in the required return of the contribution if required information was not reported within a given period of time.

At its March 10, 2004 meeting, the Board voted to adopt a new audit policy and rule compelling the disclosure of any missing (omitted) contributor information that has not been provided by the registrant within 45 days after the due date for the report on which the contributor information (required by s.11.06(1)(b), Stats.), has not been included. The Board did consider a staff proposal that would have given the filing committee 30 days from notification by the Board's staff in which to supply the missing information, but rejected that proposal. The consensus of the Board's members was that 45 days after the due date for the report was sufficient time for the filing committee to obtain and submit the missing information.

At the Board's May 19, 2004 meeting, the Board proposed that the rule or audit policy be re-drafted to treat any such contribution, in excess of \$250, as an illegal contribution, under s.11.24(1), Stats¹, unless the registrant has disclosed the information within 45 days (of the due date of the report). If the registrant has disclosed the required information within 45 days (of the due date of the report), the registrant will be considered to have made a "good faith effort," under s.11.06(5), Stats.; will not be considered to have received an illegal contribution; and will not be required to return the contribution. If the registrant has not disclosed the information within 45 days, the Board's staff will notify the registrant that the failure to disclose this information is in violation of s.11.06(1), Stats., and, under 11.24(1), Stats., may not be accepted or received by the recipient. Consequently, the recipient will be informed that he or she may not accept the contribution and must return the money to the contributor, pay it to the common school fund or pay it to a recognized charity.

¹ 11.24 Unlawful political contributions.

(2) No person may intentionally accept or receive any contribution made in violation of this chapter.

At its September 1, 2004 meeting, the Board directed changes in the policy and text of the rule that would allow the registrant to establish good faith compliance with 11.06(1), Stats., by either disclosing the required information or returning the money to the contributor within 45 days of the due date of the report. Good faith compliance means that the registrant will NOT be considered to have violated s.11.06(1), Stats., and will NOT be subject to prosecution.

The Board also directed that the registrant's failure to either supply the required information or return the contribution to the contributor within 45 days (of the due date of the report) means that the registrant has not complied in good faith with the statutes; has violated s.11.06(1), Stats., is required to divest itself of the contribution under s.11.24, Stats., and may, in egregious circumstances, be subject to a forfeiture action under ss.5.05 and 11.60, Stats.

Finally, the Board directed the staff to prepare two options with respect to registrant divestiture of an unacceptable contribution after the 45-day grace period provided by the Board's rule. In one option, the registrant may return the contribution to the contributor; or pay the amount to the Common School Fund or to another bona fide charity, at the registrant's option. In the other option, the registrant is not allowed to return the contribution to the contributor.

One consideration for the Board's members with respect to selecting an option is determining what is the effect of the return of the contribution to the contributor followed by the re-making of the contribution by the contributor: For purposes of determining limits applicable to the latter contribution, is the contributor's latter contribution a new contribution or does the effective date of the contribution relate back to the date of the original contribution. Should the rule provide that, (to avoid repeating this vicious cycle), the registrant may not "take back" the contribution unless the contributor provides the required information at the time of re-submitting the contribution?

If the Board adopts this protocol, the staff will change its filing notice (to all registrants) to inform (caution) registrants of this change in audit policy and advise them that the failure to supply required contributor information within 45 days of the due date of a report will require the return of the contribution for which information was not supplied and may result in a settlement offer for the failure to fully disclose.

The draft of the proposed rule is as follows: (Paragraph (3) is the proposed new provision. Paragraphs (1) and (2) are unchanged existing rules.)

ELBd 1. 46 Identification of individual contributors on campaign finance reports

(1) The requirement contained in s. 11.06 (1) (a), Stats., to furnish the street address of a contributor who has made a contribution or contributions aggregating more than \$20 in a calendar year includes the municipality and state as well as the street address. A complete postal address is sufficient to meet the disclosure requirement contained in the statute.

(2) The requirement contained in s. 11.06 (1) (b), Stats., to furnish the occupation and principal place of business, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of \$100 refers to the contributor's occupation and the name of the employing entity of the contributor. The listing of a business address only does not comply with the disclosure requirement of the statute.

(3) A registrant who files a campaign finance report which does not disclose all of the contributor information required by s.11.06(1)(a) or (b), Stats., shall, not later than 45 60 days after the due date for that report, notify the filing officer of all the information required for each contribution included on that report. A registrant who provides the required information or who returns the contribution to the contributor, within 45 60 days of the due date for the report, shall be considered to have made good faith compliance under s.11.06(5), Stats. and

shall not be considered to have violated s.11.06(1), Stats. A registrant who does not provide the required information and does not return the contribution, within 45 60 days of the due date for the report shall be considered to have failed to show good faith compliance under s.11.06(5), Stats., and shall be considered to have violated s.11.06(1), Stats., and shall be required to divest itself of ~~return~~ any such contribution or contributions in excess of \$250. ~~to the contributor or, at the committee's option, to pay the contribution to the common school fund or to charity.~~

Divestiture of an unacceptable contribution under this section shall consist of returning the contribution to the contributor, or paying the amount of the contribution to the Common School Fund or to any other bona fide charity.

The ~~return~~ divestiture of the contribution after 45 60 days from the due date of the report shall be in addition to the not preclude the Board's imposition of any civil penalties under s.11.60, Stats., if the egregious nature of the circumstances warrant prosecution.

The committee's disposition of the illegal contribution shall be reported on its next succeeding campaign finance report.

THE PROPOSED DRAFT² OF THE LETTER INFORMING COMMITTEES THAT THEY ARE IN VIOLATION OF S.11.06(1), STATS., AND ARE REQUIRED TO RETURN ANY CONTRIBUTIONS THAT ARE IN VIOLATION OF S.11.06(1), STATS., IS AS FOLLOWS:

(Month) _____, 2004

(Addressee) _____
_____, WI 5 _____

(SEB ID NO.)

Re: Failure to Report All Information Required by s.11.06(1), Stats.

Dear M _____:

This letter is in regard to the campaign finance report filed by your committee on _____, 2004. The Board's staff's examination of the report shows that some of the information required by s.11.06(1), Stats., (in regard to the contributions that are itemized below), has not been disclosed. Section 11.06(1), Stats., with respect to the contributor information required to be disclosed by the statute, (noted in bold print), reads as follows:

11.06 Financial report information; application; funding procedure. (1) Contents of report. Except as provided in subs. (2), (3) and (3m) and ss. 11.05 (2r) and 11.19 (2), each registrant under s. 11.05 shall make full reports, upon a form prescribed by the board and signed by the appropriate individual under sub. (5), of all contributions received, contributions or disbursements made, and obligations incurred. Each report shall contain the following information, covering the period since the last date covered on the previous report, unless otherwise provided:

(a) An itemized statement giving the date, full name and street address of each contributor who has made a contribution in excess of \$20, or whose contribution if \$20 or less aggregates more than \$20 for the calendar year, together with the amount of the contribution and the cumulative total contributions made by that contributor for the calendar year.

² The Board's staff may make changes in the form of the letter.

(b) 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.

The contributions for which the required information has not been disclosed and the information that is still required to be disclosed is as follows:

From _____ on _____, 2004, in the amount of \$ _____
(Name of contributor) (Date of contribution)

Information required: _____

From _____ on _____, 2004, in the amount of \$ _____
(Name of contributor) (Date of contribution)

Information required: _____

From _____ on _____, 2004, in the amount of \$ _____
(Name of contributor) (Date of contribution)

Information required: _____

From _____ on _____, 2004, in the amount of \$ _____
(Name of contributor) (Date of contribution)

Information required: _____

Because the required information for the above contributions was not submitted with the campaign finance report as required by s.11.06(1), Stats., and also was not submitted to the Board within 60 days of the due date for the campaign finance report, and because the contribution has not been returned within the 60-day period,, your committee has received an illegal contribution: i.e., one which violates s.11.06(1), Stats., and one which s.11.24(2), Stats., prohibits the committee from receiving and accepting:

11.24 Unlawful political contributions.

(2) No person may intentionally accept or receive any contribution made in violation of this chapter.

Therefore, your committee may not retain this contribution and is required to return the contribution to the contributor or, at the option of the committee, donate the contribution to the common school fund or to charity. Please note that the requirement to return the contribution is separate from, and in addition to, any settlement offer that may be extended to your committee for the violation of s.11.06(1), Stats., for failure to disclose.

If you have any questions about this matter, or if our office can be of any other assistance, please contact our audit staff at (608) 266-8005.

STATE ELECTIONS BOARD