

NOTICE OF PROPOSED GUIDANCE DOCUMENT

ETHICS GUIDELINE ETH-1251

Pursuant to s. 227.112, Wis. Stats., the Wisconsin Ethics Commission is hereby seeking comment on ETH-1251, a proposed guidance document. This guideline replaces the earlier guideline of the same number.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Ethics Commission until June 3, 2019, by:

1. Emailing ethics@wi.gov, or
2. Mailing written comments to:
P.O. Box 7125
Madison, WI 53707-7125

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at <https://ethics.wi.gov/Pages/Resources/ResourcesOverview.aspx> to allow for ongoing comment.

AGENCY CONTACT PERSON

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Wisconsin Ethics Commission

For persons elected to state or local office who become a candidate for national, state, or local office

50 Piece Rule

THE 50-PIECE RULE

Wisconsin's campaign finance law prohibits a person elected to state or local office who becomes a candidate for any office from using public funds for the cost of materials or distribution for 50 or more pieces of substantially identical material during the campaign season. [WIS. STAT. § 11.1205](#) This rule is also sometimes referred to as the 49-piece rule, because it allows for the distribution of up to 49 pieces of substantially identical materials, with the 50th piece being a violation of the law. While the official's intent is not an express element of the rule, the rule has historically only been applied to communications with a political purpose.¹

COVERED TIME PERIOD - [WIS. STAT. § 11.1205\(1\)](#)

This prohibition begins after:

- The first day to circulate nomination papers, if nominated by nomination papers;
- The day the board of canvassers issues a determination that the person is nominated if nominated at a primary election by write-in votes;
- The date of the caucus, if nominated at a caucus; or
- The first day of the month preceding the month which includes the last day for filing a declaration of candidacy, if nominated solely by filing the declaration.

This prohibition ends:

- The day after the date of the primary election, if the candidate is unsuccessful in being nominated at the primary election, and is not running as a write-in candidate in the election; or
- The day after the date of the election.

EXCEPTIONS TO THE 50-PIECE RULE - [WIS. STAT. § 11.1205\(2\)](#)

The 50-piece rule does not apply to the following:

- Answers to communications from constituents;
- Actions taken by a state or local government administrative officer pursuant to a specific law, ordinance or resolution which authorizes or directs the actions to be taken;
- Communications between members of the legislature regarding the legislative or deliberative process while the legislature is in session; or
- Communications not exceeding 500 pieces by members of the legislature relating solely to the subject matter of a special session or extraordinary session, made during the period between the date that the session is called or scheduled and 14 days after adjournment of the session.

¹ See [69 Atty. Gen. 259](#); [1978 Op El Bd 12](#) (withdrawn December 6, 2016).

SUBSTANTIALLY IDENTICAL

“Substantially identical” is not defined by statute, but a common dictionary definition indicates that the prohibition would apply to material that is largely, if not wholly the same.² For example, pieces that contain the same message and simply address different recipients or have a different salutation would still be substantially identical pieces.

ADDITIONAL RESOURCES

For additional information, please visit the Ethics Commission website: <https://ethics.wi.gov>. If you have additional questions, please contact the Wisconsin Ethics Commission staff by email at CampaignFinance@wi.gov, or by phone at (608) 266-8123. Advice sought from the Ethics Commission is confidential. For authoritative information, refer to Wisconsin Statutes. You may also wish to consult with an attorney.

² <https://www.merriam-webster.com/dictionary/substantial>
<https://www.merriam-webster.com/dictionary/identical>



Wisconsin Ethics Commission

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(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

CERTIFICATION OF AGENCY HEAD

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink, appearing to read 'D. Carlton, Jr.'.

Daniel Carlton, Jr.
Commission Administrator
Wisconsin Ethics Commission

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.