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# CITY OF MILWAUKEE

Form CA-43

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March 17, 2003

Ms. Terry Gabriel  
Legislative Research Analysis-Sr.  
Office of the City Clerk  
Legislative Reference Bureau  
Room B-11, City Hall

Re: Common Council File No. 021590 - An ordinance relating  
to Campaign Accounts

Dear Ms. Gabriel:

File Number CCFN 021590 was referred to this office for an opinion as to legality and enforceability. The proposed ordinance would require city elected officials and candidates for city elective office to provide financial documentation verifying the information contained in their campaign finance reports. We are of the opinion that such an ordinance would be illegal and unenforceable because the financing of campaigns is a matter of statewide concern and is an area pre-empted by State law. We reached a similar conclusion with respect to a proposal to prohibit fundraisers during budget-adoption sessions. See, 2001 OCA 625 (copy attached).

And, in fact, on March 14, we received an informal opinion of the State of Wisconsin Elections Board (copy attached), that states, in pertinent part:

Consequently, requiring campaigns to report contributions of time, labor, or the use of a person's name or requiring contributors to file reports of their contributions, as a means of campaign finance regulation at the county level, would probably be unenforceable because the Wisconsin legislature has pre-empted that field of regulation and has not chosen to impose those requirements. *A county or municipality may not add to the campaign finance requirements imposed by the Wisconsin Statutes.* (Italics added.)

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The policy of the State with respect to campaign finance is found in § 11.001(1), *Wis. Stats.*, which provides in part:

. . . The legislature therefore finds that the state has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.

Where the legislature has enacted comprehensive legislation with state-wide implications such as that relating to campaign finance, the authority of a municipality to adopt legislation in that area is limited. Generally, municipal legislation may not “infringe the spirit of a state law or... general policy of the state.” *Fox v. Racine*, 225 Wis. 542, 545 (1937) ; *see also Anchor Savings & Loan Ass’n v. Equal Opportunities Commission*, 120 Wis. 2d 391, 396 (1984).

In *Anchor Savings & Loan Ass’n*, the City of Madison adopted an ordinance regulating the credit practices of savings and loan associations. The ordinance was challenged on the grounds that it was preempted by State law, which included a comprehensive statutory structure dealing with all aspects of credit and lending in the State. The court determined that the State legislature had adopted a complex, comprehensive, and all-encompassing statutory scheme regarding savings and loan practices, that application of a city ordinance to a credit practice was contrary to the spirit of the State’s law, and that it was without authority and in conflict with the State comprehensive plan. *Anchor Savings & Loan Ass’n*, 120 Wis. 2d at 401-402.

With respect to campaign finance, the legislature has adopted a comprehensive regulatory scheme in ch. 11 of the Wisconsin Statutes. It is likely that a court reviewing the proposed ordinance would find that it infringes in an area of law that has been preempted by the State.

For these reasons, we recommend that the City continue its efforts to seek State legislation requiring candidates for public office and duly elected public officials to provide financial documentation as verification of campaign finance reports.

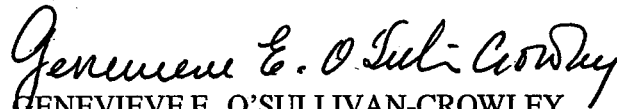
However, as we indicated in the opinion regarding prohibition of fundraisers during budget consideration, if it is the desire of the Common Council to bind its member with the requirements of this proposed ordinance, the Common Council could adopt the substance of

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the proposed ordinance as part of the Common Council procedures and rules. Obviously, however, such requirements would only be applicable to members of the Common Council, and not to other city officers or other candidates running for city elective office.

Very truly yours,

  
GRANT F. LANGLEY  
City Attorney

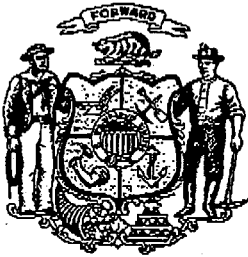
  
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c: Alderman Marvin Pratt  
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1093-2003-680

## State of Wisconsin \ Elections Board



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Chairperson



March 14, 2003

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Corporation Counsel  
Room 419, City-County Bldg.  
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Madison, Wisconsin 53709

Re: Request for Formal Opinion on Proposed Dane County Elections Commission

Dear Mr. Kornstedt:

This letter is in response to your request for a formal opinion of the State Elections Board. The Elections Board undertook consideration of your request at the Board's December 9, 1998 meeting and declined to issue a formal opinion, but did offer the following informal opinion.

You have asked whether Wisconsin's statutes "preclude a county of less than 500,000 persons from creating a county elections commission which would serve in a purely advisory capacity to the county clerk on issues relating to election law violations that the clerk is required to report under s.11.22(4)?" According to your letter, it is the intent of the proponents of the commission that it would serve as a:

neutral forum to hear and promptly respond to complaints of election law violations, especially in the final days of a campaign. The commission shall identify frivolous charges and assemble information on charges that are more substantial. The commission shall have authority to hold hearings, gather information and advise the county clerk whether there may be an election law violation to report to the district attorney. The county clerk shall make the final decision on referral to the district attorney; the clerk is not bound by the recommendations of the commission. The commission shall have no power to impose any penalty.

The statutes governing county and municipal boards of election commissioners are ss.7.20, 7.21 and 7.22 Stats., which read, in pertinent part, as follows:

**7.20 Board of election commissioners.** (1) A municipal board of election commissioners and a county board of election commissioners shall be established in every city and county over 500,000 in population.

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(2) Each board of election commissioners shall consist of 3 members, each member being chosen from lists of at least 3 names each, selected and approved by the county committee of the 2 political parties receiving the most votes for governor in the county in the case of the county board of election commissioners, and receiving the most votes for governor in the city in the case of the city board of election commissioners, in the last general election. ....

(3) The persons chosen shall be qualified electors and residents of the state and county and, for the city board of election commissioners, of the city.

(6) The election commissioners shall not hold any other public office and are ineligible for any appointive or elective public office, except the office of notary public, during their term.

**7.21 Election commissioners, duties and regulations.** (1) All powers and duties assigned to the municipal or county clerk or the municipal or county board of canvassers under chs. 5 to 12 shall be carried out by the municipal or county board of election commissioners or its executive director, unless specifically retained or assigned in this section or s.7.22.

(2) The county board of election commissioners may hire an executive director who shall perform whatever duties the board assigns to him or her. The county board shall determine the salary of that executive director. Appointment and removal of that executive director shall be subject to civil service standards. ....

(5) The city council and county board shall provide office space in the city hall and county courthouse, respectively, pay all the necessary expenses, cooperate with the board of election commissioners, provide storage space for the election equipment and supplies and assist with the moving and conducting of the elections as necessary.

**7.22 Municipal board of election commissioners.** *(None of the provisions of this statute apply to county boards of election commissioners.)*

Nothing in any of the provisions of the above statutes, or anywhere else in the Wisconsin Statutes, provides that a county having a population of under 500,000 people may establish an elections commission as described in ss.7.20 and 7.21, Stats. While the legislature did not say that such commissions may not be established in cities and counties under 500, 000 in population, it also did not say that they may be.

The type of advisory commission described in your letter and above, however, is not one that is created pursuant to ss.7.20 - 7.22, Stats. Instead of performing elections and campaign finance duties in lieu of the county or city clerk, the commission your question describes would only act as an aid to, or investigative body for, the clerk. The clerk would continue to perform all of the

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duties required of his/her office by either s.7.10 or s.7.15 of the Wisconsin Statutes. Furthermore, notwithstanding the provisions of any ordinance, the county clerk is required, by s.11.22(4), Stats., to notify the district attorney in writing of any facts within his knowledge and evidence within his possession, which may be grounds for civil or criminal prosecution. With respect to establishment of the type of advisory commission your letter describes, chs. 5 to 12 of the Wisconsin Statutes – the statutory chapters whose administration and interpretation has been delegated to the Elections Board under s.5.05(1), Stats. – are silent

Because nothing in chs. 5 to 12 of the statutes seems to either prohibit or provide for, or even speak to, the establishment of the type of commission the proposed ordinance describes, the question becomes whether the powers of a county board under ch. 59, Stats., include the authority to establish such a commission. Because the Board does not intend to invade the prerogative of the office of the corporation counsel to interpret the provisions of ch. 59, Stats., it declines to comment on whether the broad powers conferred in s.59.51, Stats., on county boards would include the power to create an advisory commission (or committee) on elections and campaign finance matters.

The second question you have raised is: "Do the statutes preclude a county from requiring its county clerk to disclose her or his involvement in political campaigns?" You have raised this question in the context of a proposed Dane County Ordinance Amendment #12, 1998-99, which reads as follows:

*Elected officials and employees whose official duties involve oversight, regulation, reporting or other official duties with respect to campaigns for county office shall disclose the nature and extent of their involvement in a notice to be posted on the county clerk's notice board.*

Also according to your letter, "The disclosure required is that of the nature and extent of the affected person's involvement, consisting of "financial contributions, contributions of personal time and labor, use of the official's or employee's name in campaign literature or any combination of these."

To the extent that the county's ordinance would require reporting or disclosure by county officials by virtue of their status as an officeholder or employee rather by virtue of their status as a candidate, the county's ethics code is implicated more so than is its elections or campaign finance law. Questions concerning the code of ethics applicable to county officials are addressed to the district attorney for the county or to the State Ethics Board.

With respect to the disclosure of contributions to or disbursements on behalf of a campaign, from a campaign finance regulation perspective, Wisconsin's campaign finance law only requires disclosure of an individual's contributions, disbursements and incurred obligations. It does not

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require disclosure of an individual's contributions of personal time and labor (unless the individual is financially compensated for that time and labor) or the disclosure of the use of an individual's name in campaign literature, (as an endorsement, for instance), or disclosure of any combination of time, labor and the use of a person's name. Furthermore, contributors to a campaign do not file a report of their contributions, the campaigns who receive those contributions file a report identifying the contribution and the contributor.

Consequently, requiring campaigns to report contributions of time, labor or the use of a person's name or requiring contributors to file reports of their contributions, as a means of campaign finance regulation at the county level, would probably be unenforceable because the Wisconsin legislature has pre-empted that field of regulation and has not chosen to impose those requirements. A county or municipality may not add to the campaign finance requirements imposed by the Wisconsin Statutes. \*

I hope that this letter has been responsive to your questions and concerns, but if it hasn't, or if I can be of any other assistance, please give me a call.

Again, this is an informal opinion of the State Elections Board and not a formal opinion, issued pursuant to s.5.05(6), Stats.

**STATE ELECTIONS BOARD**

Kevin J. Kennedy  
Executive Director

KJK/rjd

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December 28, 2001

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Assistant City Attorneys

Alderman Michael J. Murphy  
City Hall, Room 205

RE: Fundraisers During Budget Adoption Sessions

Dear Alderman Murphy:

By letter dated December 4, 2000, you request an opinion regarding a proposed new section to the ordinances, namely § 302-9 entitled "Campaign Fundraising." The effect of this legislation would be to prohibit elected city officials and their personal campaign committees as well as the campaign committees of candidates for City officers from scheduling fundraising events for themselves and other elected officials or a candidate for city office during the budget adoption season. The budget adoption season is defined to be when the Mayor introduces his or her annual budget through the date upon which the Milwaukee Common Council takes final action on the budget, after any mayoral vetoes. Clearly the proposed section 302-9 is a form of campaign finance reform applicable to City elected officials.

We have examined this provision in light of Chapter 5-13 of the Wisconsin Statutes, as well as Art. II § 3 of the Wisconsin Constitution.

The relevant portion of § 5.01(1) and (2) provides:

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

(2) GENERAL PROVISIONS OF ELECTION LAWS APPLY. The general provisions of chs. 5 to 12 apply to all elections. (Emphasis supplied).



The policy underlying campaign financing contained in Chapter 11 is the policy of reporting and making public, the nature of direct and indirect campaign support to political candidates. The purpose is to preserve the integrity of the elective process. Section 11.001(3), Wis. Stats. Chapter 11 is to ". . . be construed to impose the least possible restraint on persons or organizations whose activities do not directly affect the elective process, consistent with the right of the public to have a full, complete and readily understandably accounting of those activities intended to influence elections." Section 11.002.

Chapter 11 in § 11.01(6)(a)1 through 7. defines what a "contribution" is; whereas § 11.01(6)(b)1. through 6. defines what the term "contribution" does not include.

We observe that sec. 13.625 provides in relevant portion:

13.625 Prohibited practices. (1) No lobbyist may:

\* \* \*

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01(6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floor period, and is not in special or extraordinary session.
2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

(d) Contract to receive or receive compensation dependent in any manner upon the success or failure of any legislative or administrative action. (Emphasis added).

It is apparent to us that Chapter 11, along with Chapters 5 through 13 of the Wisconsin Statutes create a comprehensive system of regulating elections across the State of Wisconsin. Chapter 11 creates the comprehensive system of campaign finance law in Wisconsin. Section 13.625 already prohibits lobbyists from making campaign contributions in an election year

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between June and the dates of the general election. The proposed § 302-9 would make illegal that which is authorized by state law, namely campaign contributions to local races between June 1<sup>st</sup> and the November general election.<sup>1</sup>

As a result, we believe that the proposed s. 302-9 of the Milwaukee Code of Ordinances, as an ordinance, would interfere with a matter of statewide concern and statewide regulation, namely, the financing of political races within the state. Thus, it is our opinion that Chapters 11 and 13 removes the ability of a local municipal governing body to, by ordinance, affect campaign finance reform for the municipality.

However, Art. II § 3 of the Wisconsin Constitution states in relevant portion:

§ 3. Municipal home rule; debt limit; tax to pay debt

Section 3. (1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

If it is the desire of the Milwaukee Common Council to bind itself with the limitations as exemplified by s. 302-9 it would be possible for the Milwaukee Common Council to adopt the presently proposed § 302-9 as part of the Milwaukee Common Council Procedures and Rules. You note, the Wisconsin Legislature has adopted such rules for itself. However, such prohibitions would be only applicable to members of the common council, not to other City officers running for election, or lobbyists.

There are other difficulties with the proposal as drafted.

The first is that there is nothing setting forth, in any legislative findings, as to why this particular measure is being adopted and the evils it intends to eliminate. The inclusion of such a statement would be useful in future interpretation of the provision, particularly if the provision is challenged.

The second problem is more fundamental. Nowhere is the term "fundraising event" defined. We do not believe that the term "fundraising event" is so clear as applied to particular fact situations so that its meaning is inherently obvious.

<sup>1</sup> The Aldermanic and city-wide elections are held early in the election year, by April. Budget adoption usually occurs between September and December of each year.

Alderman Michael J. Murphy

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For example, if a candidate for a political office accepts contributions when no "fundraising event" is actually scheduled, does § 302-9 cover that situation? If a political candidate has a rally to discuss a particular issue or set forth their views on a particular issue and as a result thereof contributions are received from individuals, does such a rally constitute a fundraising event?


What is "fundraising event?" What are the attributes of a "fundraising event?" Does it require formal invitations to individuals who appear or is it simply the fact that a candidate has declared their candidacy, and individuals come forward to provide donations of cash or services to the candidate? Must a "fundraising event" be scheduled? What about unsolicited contributions or contributions given during the prohibited time that were solicited at an earlier time? Again, the proposal does not seem to directly address these issues.


For the foregoing reasons, we find that the term "fundraising event" needs to be further refined and defined in the legislation so that no one is in doubt as to what constitutes a "fundraising event."

You ask as to whether or not there are constitutional concerns with the legislation as written.

On the grounds of vagueness and overbreadth, we find that there are such constitutional concerns, as outlined above.

Sincerely,

  
GRANT F. LANGLEY  
City Attorney

  
BRUCE D. SCHRIMPE  
Assistant City Attorney

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