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Background WI "Conduit" rules

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Fax Correspondence Cover Sheet

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Date: 5/22/96

To: Jonathan Levin
F.E.C.

From: George Dunst
Legal counsel

Fax No.: 202-219-3923

No. of Pages
(Including coversheet): 10

Comments: Conduit Information

EB-356 (Rev 3/96)

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STATE ELECTIONS BOARD

SECTION 1. Elbd. 1.855 is created to read:

ELBD. 1.855 CONTRIBUTIONS FROM CONDUIT ACCOUNTS

(1) No contribution may be made from a conduit member's account without the conduit member's authorization which is specific as to the amount of the contribution and as to the identity of the candidate who is to receive the contribution. The conduit member's authorization may be made in writing, or may be made orally if a contemporaneous written record of the oral authorization is made by the conduit administrator.

(2) A contribution from a conduit account must be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate's committee, or to a legislative campaign, political party or support committee. A conduit may not make an in-kind contribution.

(3) Contributions from a conduit account must be transferred to the candidate, political party, or legislative campaign or support committee, within 15 days of the conduit administrator's receipt of the member's authorization.

The creation of this rule takes effect on the first day of the month following its publication in the Wisconsin Administrative Register, pursuant to s.227.22(2), Stats.



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Kevin J. Kennedy
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MEMORANDUM

TO: Elections Board Members
FROM: Kevin J. Kennedy
DATE: January 31, 1996
SUBJECT: Staff Report on Conduit Administration Issues

After working with regulations concerning conduits, and auditing conduit reports for nine years over the course of five election cycles, the Elections Board staff has identified a number of issues that need to be clarified. The focus of this memo is designed to get direction from the Board. That directions will be used to expand the handout entitled "Information on Conduits," and develop some changes to the administrative rule concerning registration and reporting requirements for conduits. A chart summarizing conduit activity is set out following this memorandum.

In 1986, the legislature formally recognized a political entity known as "conduits," in the statutes. 1985 Wisconsin Act 303, effective July 1, 1986. Prior to that time, the Elections Board, in its first formal opinion, recognized the concept of a conduit. However, the statutory codification of conduit activity is much different than the original concept identified by the Board.

In EIBd. Op. 74-1, the Elections Board recognized that an organization that receives contributions from individuals and passes them on to a parent organization is not subject to registration or reporting requirements, with respect to those contributions, if it exercises no discretion or control over the amount or ultimate destination of the contributions. This enabled local and regional organizations to pass along contributions to a state or national political action committee as part of its collection of membership fees, without being subject to Wisconsin's campaign finance registration and reporting requirements. Through a series of formal opinions, the Board recognized that this activity could be done as part of a payroll deduction plan or under the auspices of an organization. EIBd. Op. 76-5, 76-15, 77-6, 86-1, 88-3, 89-1.

By 1985, a number of conduits were acting informally, but there was no legislatively recognized means of disclosing or accounting for their campaign activity. 1985 Wisconsin Act 303 made changes to seven separate statutory provisions in an attempt to regulate conduits. These provisions are set out below:

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11.01(5m)	Definition of Conduits
11.05(9)	Registration Requirements for Conduits
11.06(11)	Reporting Requirements for Conduits
11.12(5)	Application of Special Report of Late Contributions to Conduits
11.24(1m)	Exception to Laundering Restrictions for Conduit Activity
11.26(12m)	Contributions Given Through a Conduit Treated as Contributions From an Individual
11.50(2)(b) 5.	Individual Contribution Given Through a Conduit Counts Toward the Threshold for Qualifying for Public Funding

The Elections Board adopted an administrative rule in July of 1986, to provide additional direction concerning registration and reporting requirements of conduits. EIBd 1.85, Wis. Adm. Code. There is a need to make some minor, technical revisions to this rule as a result of changes in form numbers and the elimination of a statutory requirement that contributions of \$50 or more be required to contain the occupation, name, and address, after the principal place of business of donors.

The Elections Board has developed a one-page informational statement called "Information on Conduits," which presents information on conduits in a question and answer form. The Board has also developed forms for registration and reporting of conduit activity. A copy of the statutory provisions, the administrative rule, the information sheet on conduits, and the forms are set out following this memorandum.

A number of entities are now running political action committees and conduits. In some cases, political party and legislative campaign committees are also utilizing conduits. A series of questions were received from a conduit, which led to the development of additional questions by the staff. This memorandum sets out the questions, along with the proposed answers developed by staff. The answers also include a recommendation that this information be incorporated either into the "Information on Conduits" handout or an administrative rule revision. The staff requests direction from the Board on these issues.

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Conduit Issues

1. Can funds be spent by a corporation sponsoring a conduit, knowing that the funds to pay the bills are not yet available?

Corporations are permitted to pay administrative expenses relating to a conduit and up to \$500 annually in solicitation expenses for a conduit. s.11.38(1)(a)2., 3., Stats. Corporate money may be used to set up the bank account and pay for staff to complete the forms and prepare information about the conduit. No contributions to candidates may be made until funds have been received from individuals. Staff recommends that this information be included in the handout.

2. Can the cost of a request for funds for the solicitation expenses of a conduit be paid for by the corporation?

A corporation is limited to \$500 annually in solicitation expenses for its conduit and political action committee. s.11.38(1)(a)3., Stats. It may be necessary to have an additional source of income to pay the solicitation costs related to the conduit. A request to potential contributors to the conduit for donations to pay solicitation expenses may be treated as an administrative expense with the corporation. The funds used to pay solicitation costs of the conduit must be separately accounted for by the conduit. Money may be kept in the conduit account if accurate records are maintained by the conduit administrator. Staff recommends that this information be included in the handout.

3. Can members with funds in their conduit accounts be asked to approve a transfer to the sponsoring corporation's conduit solicitation account?

Yes. The request would be an administrative expense and would require internal record keeping by the conduit administrator. Staff recommends that this information be included in the handout.

4. Can a PAC contribution be used to help pay the administrative expenses of the conduit?

No. A PAC contribution may only be used for political purposes. The administrative expenses of a conduit are not PAC expenses, because the expenses are those of a separate entity. Only a sponsoring organization (corporation) or the individual contributors may pay the administrative expenses of the conduit.

5. Can a PAC and a conduit sponsored by the same corporation share a bulk-rate permit and a business reply permit (assuming costs are attributed)?

Yes. These expenses would be either administrative or solicitation expenses. If administrative expenses, they are not limited; if solicitation expenses, they are subject to the \$500 limit. Staff recommends that this information be included in the handout.

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6. Can the corporate contribution to the solicitation expenses of the conduit exceed \$500 if only members of the association are solicited?

No. This question refers to the provisions of s.11.29, Stats., which exempt from political regulation certain communications to members. The \$500 limit on solicitation expenses paid by a corporation on behalf of a conduit is designed to limit the use of corporate money in political campaigns. s.11.38(1)(a) 3., Stats. Staff recommends that this information be included in the handout.

7. Can a corporation that sponsors both a conduit and a PAC contribute \$500 to the expenses of each?

A corporation has no limit on the amount of money it can spend for the administrative expenses of a conduit and a political action committee. There is a \$500 limit on all solicitation expenses of both the conduit and the political action committee combined. If the corporation spends \$500 on the solicitation expenses of the conduit, it cannot spend anything on the PAC, and vice versa. Staff recommends that this information be included in the handout.

8. Before registering a conduit, a bank account must be established. Where does the initial deposit to open the account come from?

Under current provisions, the conduit is not required to register until it transfers money from an existing conduit account to a candidate, political party, or legislative campaign committee. Under those circumstances, the initial money will have already been collected from individual contributors before registration is required. This money can be used to establish the bank account.

However, staff believes that the Board should modify its interpretation to require a conduit to register once it has formed the intent to operate as a conduit and has collected individual contributions. Currently, any political committee must register within five days of receiving a contribution. s.11.05(12)(6), Stats. The same requirement should apply to conduits. Staff recommends that this change be incorporated into the administrative rule.

9. Can individuals who are not members of an association contribute to its conduit?

Wisconsin law does not restrict the class of individuals who can participate in a conduit or a PAC. Therefore, individuals who are not affiliated with the entity sponsoring the conduit may participate. Their identity would be fully disclosed as part of the conduit's transmittal letters. Staff recommends that this information be included in the handout.

10. How does a conduit raise money to pay its solicitation expenses if, a) it has no corporate sponsor or, b) the total amount of solicitation exceeds the \$500 limit the corporate sponsor can pay?

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The solicitation expenses of the conduit can be paid from contributions from individual participants in the conduit. A specific written agreement should delineate how this money is raised. The conduit administrator should keep records which track the activity. There are no contribution limits with respect to money used to pay solicitation expenses that are raised from individuals. Staff recommends that this information be included in the handout.

11. Must a conduit separate the funds used for candidate contributions and administrative or solicitation expenses? If so, when must the funds be separated - at the time the funds are collected from the individuals or at the time the conduit receives authorization from an individual to use the funds for administration or solicitation expenses?

Funds for solicitation and administrative expenses need not be separated as long as accurate records are maintained by the conduit administrator indicating the source and the amount of the funds. Staff recommends this information be included in the handout.

12. Does the conduit have any reporting obligations regarding the funds raised for solicitation or administrative expenses?

There is no statutory requirement for reporting solicitation or administrative expenses, unless paid by a corporation, pursuant to s.11.38(7) 2., Stats. Staff recommends this information be included in the handout.

13. Can a corporate sponsor reimburse the conduit account for administrative charges automatically taken from the account by normal banking practices (monthly service charges, check printing, etc.)?

The corporate sponsor may transfer money into the conduit account to pay these charges. Staff recommends that this information be included in the handout.

14. If a corporation has both a PAC and a conduit, can a single solicitation letter be sent requesting money for both accounts? If so, would you divide the cost of the solicitation equally, or use some other method to allow the corporation to pay the maximum \$500 for the conduit and allow the PAC to pay its own share?

The corporation may not send a single solicitation letter requesting money for both its PAC and conduit accounts. EIBd. Op. 86-1. Staff recommends that this information be included in the handout.

15. The conduit must receive authorization from the individual prior to using the money. Can this authorization be verbal over the phone, or must the authorization be received by the conduit in writing?

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The authorization may be verbal if contemporaneous written records are maintained of the authorization. Staff recommends this information be included in the administrative rule.

16. If a conduit has an interest-bearing account, how is the interest divided or allocated among participants? Can this interest be used to pay administrative or solicitation costs?

The interest earned on a conduit account belongs to the participants, not the conduit, because the money is the individuals'. The conduit would be responsible for reporting interest earned as income to the individuals. The money may not be used for administrative or solicitation costs without the express authorization from the participants. EIBd. Op. 389-1. Staff recommends that this information be included in the handout.

17. What are solicitation expenses?

Solicitation expenses include activities which, as their sole purpose and by their nature or manner, result solely in the raising of money for the conduit account. A letter from the conduit administrator informing members of a fundraiser and recommending a contribution is a solicitation expense. Staff recommends that this information be included in the handout.

18. May a conduit make in-kind contributions?

A conduit can only transfer contributions of money. s.11.05(a)(b), Stats. Staff recommends that this information be included in an administrative rule.

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tion committee, or political party committee on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under s. 11.25 (9) (a), Stats., and spending limits under s. 11.31 (2), Stats., and s. EIBd 1.44, except as provided in par. (a).

(c) Exceptions to para. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political party committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) If a candidate, candidate's committee, political action committee, or political party committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in s. 11.25 (17), Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

(3) Any expenditures for consulting services shall be valued at the fair market value of the item or services at the time of the contribution.

History: Emerg. cr. cf. 6-1-66; cr. Register, November, 1966, No. 371, cf. 12-1-66.

EIBd 1.65 Opinion poll results. (1) The term "overall cost" as used in s. 11.06 (12) (b), Stats., means the value of the opinion poll or voter survey results, as defined in s. 11.06 (12) 4., Stats., as determined by the individual or committee which commissions the poll or survey.

(2) The transfer to a candidate or committee of the results of a poll or survey, other than by a sale, is an in-kind contribution to such candidate or committee and reportable on the candidate's or committee's campaign finance report due for the period during which the results are received.

(3) The value of the poll or survey equal to the applicable percentage of full value as provided in s. 11.06 (12) (b) through (f), Stats., is based on the reasonable costs incurred in conducting the poll or survey. These costs include the costs for staff salary or other compensation, rent, telephones, poll lists, telephone calls, and computer use and supplies, and other reasonable and necessary items associated with creating the opinion results as defined in s. 11.06 (12) (a) 3., Stats.

History: Emerg. cr. cf. 7-1-66; cr. Register, November, 1966, No. 371, cf. 12-1-66.

EIBd 1.70 Travel reimbursements. (1) A candidate (or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her per-

sonal campaign committee subject to the applicable spending limits of s. 11.31 (2), Stats., and s. EIBd 1.44 and is deemed to provide nonreportable volunteer services to the candidate in the other district.

(2) If the candidate or elected official is reimbursed by another individual, personal campaign committee, political action committee, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

(3) If the candidate or elected official is an officer or employee of a legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the legislative campaign committee.

History: Emerg. cr. cf. 6-1-66; cr. Register, November, 1966, No. 371, cf. 12-1-66.

EIBd 1.75 Purchase of capital assets by campaign registrants. (1) In this section:

(a) "Capital asset" means any asset, purchased by, or contributed to, a campaign committee, which has a useful life greater than the campaign period in which the asset was purchased, received or otherwise acquired.

(b) "Non-political use" means any usage, by a registrant, for purposes other than those specified in s. 11.01 (16), Stats.

(c) "Political purposes" has the meaning provided in s. 11.01 (16), Stats.

(d) "Registrant" has the same meaning as provided in s. 11.01 (16m), Stats.

(2) No capital asset may be purchased with campaign funds by a registrant unless the asset will be used principally for political purposes.

(3) Any non-political use of a capital asset purchased with campaign funds shall be incidental.

(4) A capital asset purchased and owned by an individual for personal use may be leased by a campaign registrant for use for political purposes only.

(5) Any rent or reimbursement paid for the use of a capital asset, by a registrant, shall be comparable to the commercial rate paid for the lease or rent of a similar item.

(6) The cost of materials, supplies or other expenses incurred in the use of a capital asset for political purposes may be paid with campaign funds by a registrant.

(7) If campaign funds are used by a registrant to pay for the lease and service of a capital asset, the terms of the lease or other rental agreement, including those of a service or maintenance contract, shall be in writing.

History: Cr. Register, January, 1992, No. 493, cf. 2-1-92.

EIBd 1.85 Conduit registration and reporting requirements. (1) A conduit, as defined in s. 11.01 (5m), Stats., is required to register no later than the date of the initial transfer of a contribution to a candidate, personal campaign committee, legislative campaign committee, or political party committee.

Register, January, 1994, No. 457

EBB 1.20

(2) A conduit shall register with the filing officer as defined in s. 11.02, Stats., on the conduit registration statement, form EB-9.

(3) A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor and the date and amount of each contribution.

(4) A conduit shall report to the transferee the occupation and principal place of employment, if any, of the contributor if the contributor's cumulative contributions exceed \$50 for the calendar year.

(5) A conduit shall file a campaign finance report, form EB-10, at the times specified in s. 11.20, Stats., except that the pre-primary or pre-election report is filed only when a contribution is made during that period. If the conduit has no reportable activity during the continuing report period, the conduit may report on the campaign finance report, short form, form EB-2a.

(6) A conduit shall file with its campaign finance report 2 copies of each letter of transmittal sent to each transferee during the reporting period.

(7) A conduit shall file with the filing officer a special report of late contribution, form EB-3, within 24 hours of making a transfer to a candidate or committee of more than \$500 in a single amount or cumulatively received during the 15 day period before the primary or election.

History: EBB 1.20: cr. Register, November, 1994, No. 371, of. 12-1-94.

EBB 1.25 Contributions of individuals under the age of 18. For purposes of campaign finance regulation under ch. 11, Stats., the contribution to a candidate for election or nomination to any of the offices specified in s. 11.26, Stats., of any individual less than 18 years of age at the time of contribution, shall be treated as follows:

(1) The contribution of individual contributors less than 14 years of age at the time of the contribution shall be treated as the contribution of the contributor's parents or legal guardians. If the contributor has more than one parent or one legal guardian, the contribution shall be attributed to each parent or each guardian in equal shares or in such shares as the parents or the guardians determine by written agreement.

(2) The contribution of individual contributors who are 14 years of age or older at the time of the contribution shall be treated for all purposes of campaign finance regulation under ch. 11, Stats., as the contribution of the individual contributor.

(3) This section shall not affect the determination of an individual's right or authority to make contributions from a multi-party account at a financial institution.

History: Cr. Register, January, 1992, No. 423, of. 2-1-92.