

Joint Committee for Review of Administrative Rules

Office of Sen. Glenn Grothman

Office of Rep. Mark Gottlieb

Phone: 608.266-7513

Phone: 608.267.2369

Emergency Rule EIBd 1.395

Report to the Legislature
Emergency Rule EIBd 1.395

The Joint Committee for Administrative Rules

Produced pursuant to 227.26(2)(g), Stats.

Emergency Rule EIBd 1.395, promulgated by the Elections Board, relates to the use of funds in a federal campaign committee that has been converted to a state campaign committee and to the prohibition on the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee. The rule was adopted by the Elections Board at its meeting on January 26, 2005. It went into effect on February 3, 2005. The rule also required a state committee to divest itself of converted funds that were not raised in compliance with state law.

Description of the Problem

A recent change in federal law permits the transfer of funds in a federal candidate's campaign committee account to the candidate's state committee account. Since the enactment of the Bi-Partisan campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November 2004, Congress amended the Federal Election Campaign Act (H.R. 4818, sections 532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and

restrictions. For Wisconsin, the impact of this change in federal law was to revert back to the way it was prior to BICRA, when state law allowed this practice.

Because of Congress' action in November 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule EIBd 1.39, WI Administrative Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Arguments in Favor of Objection

- The situation fails to meet the standard for an emergency rule in 227.24(1), Stats, which states: "An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures."
- The current mayor of Milwaukee executed just such a conversion only a few years ago without any disastrous impact on the welfare of our state. If there was no emergency then, there is no emergency now.
- Several other similar situations have occurred during the past 25 years. The Elections Board failed to take action at that time, and it has failed to engage in rule-making at any time during the interim.
- The statutes are unclear. A staff person from the Elections Board indicated his belief that the Board may adopt either a rule to allow or a rule to prohibit this practice. This emergency rule should be suspended until the law is clarified by the Legislature.
- The Elections Board exceeded its statutory authority in adopting this rule. State agencies don't have authority unless given it by the Legislature.

- The action of the Elections Board was overtly political, and clearly aimed at affecting a particular candidate.

Arguments Against Objection

- The statutes are unclear, and the rule clarifies the statutes.
- A candidate should not be able to convert funds from a federal campaign committee to a state campaign committee if those funds could not have been collected directly into a state campaign committee.
- A state candidate should not be allowed to convert federal campaign committee funds contributions that exceed the maximum amount allowed under state law.

Action by Joint Committee for Administrative Rules

At the request of JCRAR Co-Chairs, Senator Glenn Grothman and Representative Mark Gottlieb, the Joint Committee for Review of Administrative Rules held a public hearing and executive session on ELBd 1.395 on February 9, 2005. The committee passed a motion on a 6 to 4 vote, pursuant to ss. 227.19(4)(d) 1. and 6. to suspend EIBd 1.395. This action prevents the Elections Board from promulgating this emergency rule.