



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on Labor and Election Process  
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**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

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- Miscellaneous ... **Misc**

**MEMORANDUM**

**TO: ELECTIONS BOARD MEMBERS**

**FROM: GEORGE A. DUNST, LEGAL COUNSEL**

**MEETING DATE: OCTOBER 20, 2004**

**SUBJECT: PROPOSED LEGISLATION INCREASING  
REGISTRATION AND REPORTING LIMITS  
UNDER SS.11.05 AND 11.06 OF THE STATUTES**

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At its September 1, 2004 meeting, the Board directed staff to draft changes in the monetary limits that trigger various registration and reporting requirements under ss.11.5/11.06, Stats. Specifically, the Board proposed that the \$25 registration limit be raised to \$100; that the \$20 limit that triggers various reporting requirements be raised from a \$20 contribution to a contribution of \$100; that the current \$100 contribution threshold that triggers additional reporting requirements be raised to \$250; and, finally, that the \$1,000 reporting exemption limit be raised to \$2,500. The following proposed legislation shows the statutes with the new limits underlined and the old limits struck through.

The Board's counsel has also proposed an amendment to s.11.06(2), Stats., (**Disclosure of certain indirect disbursements**), that excludes from reporting requirements disbursements by individuals and non-registrant committees for express advocacy **if** those disbursements do not exceed \$100. The further consequence of this provision is that source identification (disclaimers) will not be required under s.11.30, Stats., for communications made by individuals and non-registrant committees **if** the disbursements by those individuals and non-registrant committees do not exceed \$100 (because the last sentence of s.11.30(2)(a), Stats., provides: "This paragraph does not apply to communications for which reporting is not required under s. 11.06 (2)").

**PROPOSED LEGISLATION**

**11.05 Registration of political committees, groups and individuals.**

**(1) Committees and groups.** Except as provided in s. 9.10 (2) (d), every committee other than a personal campaign committee, and every political group subject to registration under s. 11.23 which makes or accepts contributions, incurs obligations or makes disbursements in a calendar year in an aggregate amount in excess of ~~\$25~~ 100 shall file a statement with the appropriate filing officer giving the information required by sub. (3). In the case of any committee other than a personal campaign committee, the statement shall be filed by the treasurer. A personal campaign committee shall register under sub. (2g) or (2r).

**(2) Individuals.** Except as provided in s. 9.10 (2) (d), every individual, other than a candidate or agent of a candidate, who accepts contributions, incurs obligations, or makes

disbursements in a calendar year in an aggregate amount in excess of ~~\$25~~ 100 shall file a statement with the appropriate filing officer giving the information required by sub. (3). An individual who guarantees a loan on which an individual, committee or group subject to a registration requirement defaults is not subject to registration under this subsection solely as a result of such default.

**(2r) General reporting exemptions.** Any person, committee or group, other than a committee or individual required to file an oath under s. 11.06 (7), who or which does not anticipate accepting contributions, making disbursements or incurring obligations in an aggregate amount in excess of ~~\$1,000~~ 2500 in a calendar year and does not anticipate accepting any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding ~~\$100~~ 250 in that year may indicate on its registration statement that the person, committee or group will not accept contributions, incur obligations or make disbursements in the aggregate in excess of ~~\$1,000~~ 2,500 in any calendar year and will not accept any contribution or contributions from a single source, other than contributions made by a candidate to his or her own campaign, exceeding ~~\$100~~ 250 in such year. Any registrant making such an indication is not subject to any filing requirement if the statement is true. The registrant need not file a termination report. A registrant not making such an indication on a registration statement is subject to a filing requirement. The indication may be revoked and the registrant is then subject to a filing requirement as of the date of revocation, or the date that aggregate contributions, disbursements or obligations for the calendar year exceed ~~\$1,000~~ 2,500, or the date on which the registrant accepts any contribution or contributions exceeding ~~\$100~~ 250 from a single source, other than contributions made by a candidate to his or her own campaign, during that year, whichever is earlier. If the revocation is not timely, the registrant violates s. 11.27 (1).

**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:

An itemized statement giving the date, full name and street address of each contributor who has made a contribution in excess of ~~\$20~~ 100, or whose contribution if ~~\$20~~ 100 or less aggregates more than ~~\$20~~ 100 for the calendar year, together with the amount of the contribution and the cumulative total contributions made by that contributor for the calendar year.

(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~~ 250.

(c) The name and address of each registrant from which a transfer of funds was received or to which a transfer of funds was made, together with the date and amount of such transfer, and the cumulative total for the calendar year.

(d) An itemized statement of other income in excess of \$20100, including interest, returns on investments, rebates and refunds received.

(e) An itemized statement of contributions over \$20100 from a single source donated to a charitable organization or to the common school fund, with the full name and mailing address of the donee.

(f) An itemized statement of each loan of money made to the registrant for a political purpose in an aggregate amount or value in excess of \$20100, together with the full name and mailing address of the lender; a statement of whether the lender is a commercial lending institution; the date and amount of the loan; the full name and mailing address of each guarantor, if any; the original amount guaranteed by each guarantor; and the balance of the amount guaranteed by each guarantor at the end of the reporting period.

(g) An itemized statement of every disbursement exceeding \$20100 in amount or value, together with the name and address of the person to whom the disbursement was made, and the date and specific purpose for which the disbursement was made.

(h) An itemized statement of every obligation exceeding \$20100 in amount or value, together with the name of the person or business with whom the obligation was incurred, and the date and the specific purpose for which each such obligation was incurred.

(i) A statement of totals during the reporting period of contributions received and disbursements made, including transfers made to and received from other registrants, other income, loans, and contributions donated as provided in par. (e).

(j) In the case of a committee or individual filing an oath under sub. (7), a separate schedule showing for each disbursement which is made independently of a candidate, other than a contribution made to that candidate, the name of the candidate or candidates on whose behalf or in opposition to whom the disbursement is made, indicating whether the purpose is support or opposition.

(jm) A copy of any separate schedule prepared or received pursuant to an escrow agreement under s. 11.16 (5). A candidate or personal campaign committee receiving contributions under such an agreement and attaching a separate schedule under this paragraph may indicate the percentage of the total contributions received, disbursements made and exclusions claimed under s. 11.31 (6) without itemization, except that amounts received from any contributor pursuant to the agreement who makes any separate contribution to the candidate or personal campaign committee during the calendar year of receipt as indicated in the schedule shall be aggregated and itemized if required under par. (a) or (b).

(k) A statement of the balance of obligations incurred as of the end of the reporting period.

(L) A statement of cumulative totals for the calendar year of contributions made, contributions received, and disbursements made, including transfers of funds made to or received from other registrants.

(m) A statement of the cash balance on hand at the beginning and end of the reporting period.

**(1m) Surplus campaign materials.** Notwithstanding sub. (1)(a) and (g), a registrant need not provide an itemized statement of a contribution or disbursement of surplus materials acquired in connection with a previous campaign of the registrant for or against the same candidate, candidates, party or referendum in connection with which the materials are utilized, if the materials were previously reported as a contribution or disbursement by that registrant.

**(2) Disclosure of certain indirect disbursements.** Notwithstanding sub. (1), if a disbursement is made or obligation incurred by an individual other than a candidate or by a committee or group which is not primarily organized for political purposes, and the disbursement does not constitute a contribution to any candidate or other individual, committee or group, the disbursement or obligation is required to be reported only if the purpose is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum and the disbursement exceeds \$100. The exemption provided by this subsection shall in no case be construed to apply to a political party, legislative campaign, personal campaign or support committee.

**(4) When transactions reportable.** (a) A contribution is received by a candidate for purposes of this chapter when it is under the control of the candidate or campaign treasurer, or such person accepts the benefit thereof. A contribution is received by an individual, group or committee, other than a personal campaign committee, when it is under the control of the individual or the committee or group treasurer, or such person accepts the benefit thereof.

(b) Unless it is returned or donated within 15 days of receipt, a contribution must be reported as received and accepted on the date received. This subsection applies notwithstanding the fact that the contribution is not deposited in the campaign depository account by the closing date for the reporting period as provided in s. 11.20 (8).

(c) All contributions received by any person acting as an agent of a candidate or treasurer shall be reported by such person to the candidate or treasurer within 15 days of receipt. In the case of a contribution of money, the agent shall transmit the contribution to the candidate or treasurer within 15 days of receipt.

(d) A contribution, disbursement or obligation made or incurred to or for the benefit of a candidate is reportable by the candidate or the candidate's personal campaign committee

if it is made or incurred with the authorization, direction or control of or otherwise by prearrangement with the candidate or the candidate's agent.

**11.23 Political groups and individuals; referendum questions.** (1) Any group or individual may promote or oppose a particular vote at any referendum in this state. Before making disbursements, receiving contributions or incurring obligations in excess of ~~\$25~~100 in the aggregate in a calendar year for such purposes, the group or individual shall file a registration statement under s. 11.05 (1), (2) or (2r). In the case of a group the name and mailing address of each of its officers shall be given in the statement. Every group and every individual under this section shall designate a campaign depository account under s. 11.14. Every group shall appoint a treasurer, who may delegate authority but is jointly responsible for the actions of his or her authorized designee for purposes of civil liability under this chapter. The appropriate filing officer shall be notified by a group of any change in its treasurer within 10 days of the change under s. 11.05 (5). The treasurer of a group shall certify the correctness of each statement or report submitted by it under this chapter.

**11.30 Attribution of political contributions, disbursements and communications.**

(1) No disbursement may be made or obligation incurred anonymously, and no contribution or disbursement may be made or obligation incurred in a fictitious name or by one person or organization in the name of another for any political purpose.

(2) (a) The source of every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement or other communication which is paid for by or through any contribution, disbursement or incurred obligation shall clearly appear thereon. **This paragraph does not apply to communications for which reporting is not required under s. 11.06 (2).**

**11.12 Campaign contributions and disbursements; reports.**

(2) Any anonymous contribution exceeding ~~\$10~~50 received by a campaign or committee treasurer or by an individual under s. 11.06 (7) may not be used or expended. The contribution shall be donated to the common school fund or to any charitable organization at the option of the treasurer.

Board meetings/ mtg 20 oct 04/PROPOSED LEGISLATION

**MEMORANDUM**

**TO: ELECTIONS BOARD MEMBERS**

**FROM: GEORGE A. DUNST, LEGAL COUNSEL**

**MEETING DATE: MAY 19, 2004**

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

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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 promulgate a 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.

The proposed draft requires a registrant to return any contribution regarding which any contributor information is still undisclosed after 45 days from the due date of the report on which the information was required to be disclosed. The basis for that sanction is the prohibition of s.11.24(2), Stats., and the disclosure requirement of s.11.06(1)(b) as follows:

***11.24 Unlawful political contributions. (1) . . .***

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

***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.

(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 Board's authority to promulgate rules is discussed at length in the accompanying memorandum on the proposed amendment to ElBd 1.28, Wis. Adm. Code, the Board's rule defining regulated activity (the issue advocacy rule memorandum). The Board's statutory authority to promulgate this rule under the enabling statutes, (ss.505(1)(f), 11.06(1)(b) and 11.24(2), Stats.), is as described in the following paragraph.

If a registrant may not accept or receive a contribution made in violation of ch.11, and if a registrant has in its possession a contribution made in violation of ch.11 (because the contributor has not provided the information required by s.11.06(1), Stats.), it follows that the registrant may not retain that contribution. The requirement that contributions made in violation of ch.11, (i.e., contributions for which required information has not been supplied), be returned to the contributor (or paid to the Common School Fund or to the WECF) is identical to the treatment provided in ch.11<sup>1</sup> for other prohibited contributions. Thus, the rule appears to be a reasonable exercise of the Board's discretion in s.5.05(1)(f), Stats., to "Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration," to wit: s.11.06, Stats.' requirement of full disclosure of contributor information.

Agreement with the foregoing rationale, however, and acquiescence in the validity of the rule – because the rule only allows a 45-day grace period to accommodate good faith compliance - may not be universal.

The Board's counsel has had a Scope Statement published for the proposed rule to enable the Board to discuss the promulgation of a proposed rule. A first draft of the proposed rule is included below. (The underlined language is the proposed new language.)

***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***

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<sup>1</sup> See ss.11.07(5), 11.12(2), 11.19(1), 11.23(2), 11.26(11) and 11.38(6), Stats.

*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.*

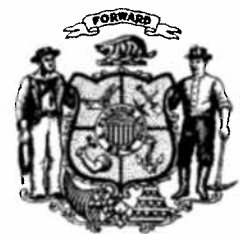
*(2) The requirement contained in s. 11.06 (1) (b), Stats., to furnish the occupation and principal place of business, if any, of each individual contributor whose cumulative contributions for the calendar year are in excess of \$100 refers to the contributor's occupation and the name of the employing 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) and ) (b), Stats., shall, not later than 45 days after the due date for that report, notify the filing officer of all the information required for each contribution included on that report. Any contribution regarding which all required contributor information has not been disclosed within 45 days of the due date of the report on which the contribution is required to be disclosed, shall be returned not later than 60 days after the due date for that report.*

At the Board's May 19, 2004 meeting, the Board needs to decide whether to promulgate the rule as-is; whether to make changes in the language of the rule; or whether to not promulgate the rule at this time (or at all).



# WISCONSIN STATE LEGISLATURE



# State of Wisconsin \ Elections Board

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JOHN C. SCHOBER  
Chairperson

KEVIN J. KENNEDY  
Executive Director

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## 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.

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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), Stats.<sup>1</sup>, 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.

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<sup>1</sup> 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.)

***EIBd 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 DRAFT<sup>2</sup> 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.

<sup>2</sup> 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.*

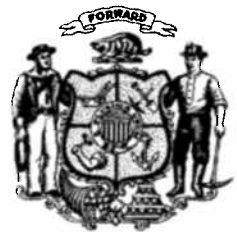
Therefore, your committee may not retain this contribution and is required to return the contribution to the contributor or, at the option of the committee, donate the contribution to the common school fund or to charity. Please note that the requirement to return the contribution is separate from, and 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**



# WISCONSIN STATE LEGISLATURE





# 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](mailto:seb@seb.state.wi.us)  
<http://elections.state.wi.us>



CARL HOLBORN  
Chairperson

KEVIN J. KENNEDY  
Executive Director

September 8, 2005

Assembly Committee on Campaigns and Elections  
Representative Stephen Freese, Chair  
115 West, State Capitol  
Committee Clerk : Terri Griffiths

Senate Committee on Labor and Election Process Reform  
Senator Tom Reynolds, Chair  
306 South, Capitol  
Committee Clerk : Patrick Henneger

Dear Ms. Griffiths and Mr. Henneger:


Enclosed please find a corrected version of the Elections Board's rule, Clearinghouse Rule 05-061. The original version of the rule, referred to each of your committees on September 7, 2005, contains an incorrect reference in par.(3)(c). Currently, par.(3)(c) refers to "divestiture of a contribution under par.(a)" when it should read "divestiture of a contribution under par.(b)." The corrected version of par.(3)(c) should read as follows:

(c) Divestiture of a contribution under par. (b) 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 charitable organization.

The enclosed corrected version of the rule has made this change. The Legislative Council's office has suggested that modification of the rule under s.227.19(4)(b)3., Stats., should still be permissible.

If you have any questions about this matter, or if I can be of any other assistance, please give me a call.  
(608) 266-0136)

STATE ELECTIONS BOARD

  
George A. Dunst  
Legal Counsel

# WISCONSIN ADMINISTRATIVE CODE

## STATE ELECTIONS BOARD

SECTION 1. EIBd 1.46(3) is created to read:

### **EIBd 1.46 Identification of individual contributors on campaign finance reports.**

(3)(a) 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 60 days after the due date for that report, notify the filing officer, in writing, of all the information required for each contribution included on that report or return the contribution to the contributor. A registrant who provides the required information or who returns the contribution to the contributor, within 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.

(b) A registrant who does not provide the required information and does not return the contribution, within 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, with respect to any contribution under par. (a) that exceeds \$250, shall divest itself of all of that contribution.

(c) Divestiture of a contribution under par. (b) 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 charitable organization.

(d) The divestiture of the contribution after 60 days from the due date of the report shall not preclude the board's imposition of any civil penalties under s.11.60, Stats., if the circumstances warrant prosecution.

(e) The registrant's divestiture of a contribution under par. (a) shall be reported on its next succeeding campaign finance report.

### INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

CONTACT PERSON:

George A. Dunst  
Legal Counsel, State Elections Board  
17 W. Main Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973; Phone 266-0136

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

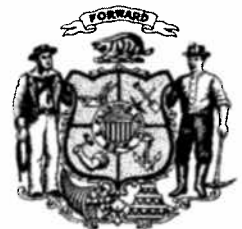
Dated September 2, 2005,

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KEVIN J. KENNEDY  
Executive Director



# WISCONSIN STATE LEGISLATURE



New Clearinghouse Rule received by our Committee.  
Deadline to object is Oct. 7<sup>th</sup> if you choose to do so.  
Looks okay to me.  
It passed the Elections Board unanimously.

**REPORT**

**OF**

**STATE ELECTIONS BOARD**

Clearinghouse Rule 05-061  
Rules Chapter ElBd. 1.46(3)  
Wisconsin Administrative Code

El.Bd. 1.46(3)

1. Findings of fact:

The Elections Board finds that the legislature has directed it to promulgate rules to regulate campaign finance reporting and to ensure the proper administration of that reporting. The Board finds that a rule requiring the divestiture of contributions for which reporting is not complete will facilitate compliance with Wisconsin's campaign finance law, and maintain the public's confidence in that compliance and in the reporting of campaign finance activity.

Notwithstanding the provisions of ss.11.06(1)(a) and (1)(b), Stats., that require registrants to disclose specific information with the filing of a campaign finance report, Subsection 11.06(5), Stats., governing compliance with the section, only requires that "A registered individual or treasurer of a group or committee shall make a good faith effort to obtain all required information" on each campaign finance report. Thus, a registrant that has made a "good faith effort to obtain all required information" would seem to have complied with its statutory filing requirements. The statute, however, does not define or explain what constitutes a "good faith effort."

The rule prescribes the standard for what constitutes a "good faith effort to obtain all required information" under the statute, and prescribes the consequences for a registrant's acceptance of a contribution for which the registrant has not "obtained all required information," under the statute. To constitute "good faith" compliance, a registrant has 60 days (from the due date of the report) in which to obtain all required information, or return any contribution for which that information has not been obtained. The failure to provide the required information or return the contribution within the 60 day period, constitutes a failure to make a "good faith effort" and, thereby, constitutes a violation of s.11.06(1), Stats., subjecting the registrant to a possible forfeiture and a requirement to return all of any such contribution that exceeds \$250. All of any such contribution, not just the excess over \$250, must be returned. The rule applies to all the information requirements of ss.11.06(1)(a) and (1)(b), Stats., not just the information requirements of (1)(b).

Federal law has a comparable standard for information compliance on campaign finance reports. 2 U.S.C. 432(i), requires campaign committees and their treasurers to use "best

efforts” to obtain, maintain and submit the information required by the Federal Election Campaign Act, but does not have a definition of what constitutes “best efforts.” The federal standard for compliance is limited to sending written requests for information to the contributors but does not provide a consequence if those written requests do not result in producing the required information because “best efforts” constitutes satisfactory compliance.

Sec. 104.7 Best efforts (2 U.S.C. 432(i)).

(a) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

Based on its own history with a policy or practice that was similar in application to the federal rule, the Elections Board rejected the federal model as ineffective in obtaining full compliance in Wisconsin.

The State of Illinois has a similar (to Wisconsin’s) statutory provision that requires committees to “make a good faith effort to ascertain” required contributor information. The State of Iowa does not have a comparable “good faith” provision, but does require registrants to sign their reports indicating that the report is complete. Michigan does not have a “good faith compliance” statute, either, but does provide, by statute, that the person responsible for preparing or filing a campaign finance report is subject to a fine of up to \$1,000 if that person knowingly files an incomplete or inaccurate report. Minnesota does not have a “good faith” provision, but does require the person signing the report to certify that all reports required by its reporting statute, s.211A.02, Minn. Stats., have been submitted.

2. Conclusion and recommended action:

The State Elections Board unanimously concludes that El.Bd1.46(3) should be created. The creation of this rule is necessary to facilitate and ensure full compliance with the information requirements of Wisconsin campaign finance reports and to enhance registrants’ compliance with Wisconsin’s campaign finance reporting law. The Board recommends promulgation of this rule.

3. Explanations of modifications to the proposed rule:

The State Elections Board makes no substantive modifications to this rule.

4. List of persons appearing at the public hearing:

No public hearing was held. The rule was submitted pursuant to the 30-

day notice procedure of s.227.16(2)(e), Stats. No person who will be affected by the rule filed a petition for a public hearing within the 30-day period provided by that statute.

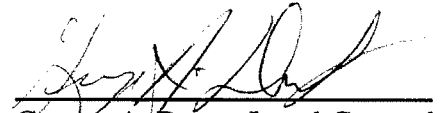
5. Response to Legislative Council staff report:

The State Elections Board adopts the Legislative Council's staff's comments and has incorporated the suggested changes in the rule.

Respectfully submitted,

September 2, 2005

**STATE ELECTIONS BOARD**

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George A. Dunst, Legal Counsel

## WISCONSIN ADMINISTRATIVE CODE

### STATE ELECTIONS BOARD

SECTION 1. EIBd 1.46(3) is created to read:

**EIBd 1.46 Identification of individual contributors on campaign finance reports.**

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(b) A registrant who does not provide the required information and does not return the contribution, within 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, with respect to any contribution under par. (a) that exceeds \$250, shall divest itself of all of that contribution.

(c) Divestiture of a contribution under par. (a) 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 charitable organization.

(d) The divestiture of the contribution after 60 days from the due date of the report shall not preclude the board's imposition of any civil penalties under s.11.60, Stats., if the circumstances warrant prosecution.

(e) The registrant's divestiture of a contribution under par. (a) shall be reported on its next succeeding campaign finance report.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS:**

The creation of this rule does not affect business.



FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

CONTACT PERSON:

George A. Dunst  
Legal Counsel, State Elections Board  
17 W. Main Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973; Phone 266-0136

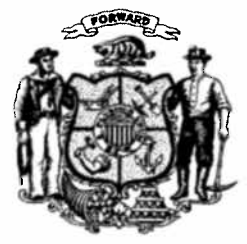
The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated September 2, 2005,

  
for KEVIN J. KENNEDY  
Executive Director



# WISCONSIN STATE LEGISLATURE



## Henneger, Patrick

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**From:** Henneger, Patrick  
**Sent:** Wednesday, September 07, 2005 11:25 AM  
**To:** Schaeffer, Carole; Sen.Lazich; Lundie, Shawn; Sen.Kanavas; Genrich, Eric; Sen.Hansen; Ewy, Stuart; Sen.Carpenter  
**Subject:** Clearinghouse Rule 05-061 received by Senate Labor and Election Process Reform Committee

Members of the Senate Committee on Labor and Election Process Reform:

The Committee received the following Clearinghouse Rule this afternoon:

**CHR 05-061 - An order to create Elbd 1.46(3), relating to the indentification of individual contributors on campaign finance reports.**

A copy of the rule can be found on Folio at [http://folio.legis.state.wi.us/cgi-bin/om\\_isapi.dll?clientID=30719030&infobase=clearinghouse.nfo&softpage=Browse\\_Frame\\_Pg](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=30719030&infobase=clearinghouse.nfo&softpage=Browse_Frame_Pg)

If you would like a hard copy, give me a call at 6-2512 or just send me an e-mail.

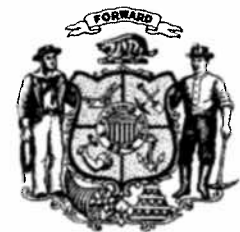
The 30-day deadline for action on this rule will fall on Friday October 7th.

Let me know if you have any questions.

Patrick Henneger  
Committee Clerk  
Senate Committee on Labor and Election Process Reform  
Office of Senator Tom Reynolds



# WISCONSIN STATE LEGISLATURE



**Henneger, Patrick**

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**From:** Henneger, Patrick  
**Sent:** Tuesday, September 27, 2005 3:26 PM  
**To:** Schaeffer, Carole; Sen.Lazich; Lundie, Shawn; Sen.Kanavas; Genrich, Eric; Sen.Hansen; Ewy, Stuart; Sen.Carpenter  
**Subject:** Meeting with Kevin Kennedy regarding Clearinghouse Rule 05-061

Members of the Senate Committee on Labor and Election Process Reform:

As you know, the Committee recently received Clearinghouse Rule 05-061 promulgated by the State Elections Board. Senator Reynolds sent a letter to the Elections Board requesting a meeting to discuss the rule. A copy of the letter has been sent to each member. The meeting with Kevin Kennedy and George Dunst is scheduled for this Thursday, September 29th at 2 pm in Senator Reynold's office, Room 306 South. If you would like to attend the meeting, please email back in case we need to reserve a conference room to accommodate everyone.

Because a meeting with the agency has been requested, the deadline to object to the rule has been extended for an additional 30 days. The new deadline for action on this rule will now fall on Friday, November 4th.

Please let me know if you have any questions.

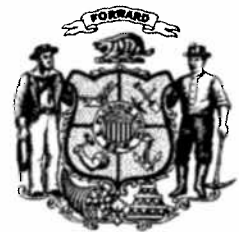
Patrick Henneger  
Committee Clerk  
Senate Committee on Labor and Election Process Reform  
Office of Senator Tom Reynolds

Schedule  
Reminders  
↓  
Done

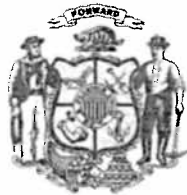
~~Grand Se Her~~  
~~11/11/05~~



# WISCONSIN STATE LEGISLATURE



**State Senator Tom Reynolds**  
FIFTH SENATE DISTRICT



Office: (608) 266-2512 • Toll Free: (866) 817-6061  
Fax: (608) 267-0367 • In-District: (414) 456-9230

State Capitol, Room 306 South  
P.O. Box 7882, Madison, WI 53707  
Web Site: [SenReynolds.com](http://SenReynolds.com)

September 27, 2005

Mr. Kevin Kennedy  
Executive Director  
Wisconsin State Elections Board  
17 West Main Street, Suite 310  
P.O. Box 2973  
Madison, Wisconsin 53701-2973

Dear Kevin:

As you are aware, the Senate Committee on Labor and Election Process Reform recently received Clearinghouse Rule 05-061 promulgated by the Elections Board relating to the identification of individual contributions on campaign finances reports. My office recently spoke with George Dunst, legal counsel to the Elections Board, to schedule a meeting regarding CHR 05-061. Please allow this letter to confirm the meeting scheduled for Thursday September 29<sup>th</sup> at my office. I look forward to meeting with you and Mr. Dunst.

Sincerely,

A handwritten signature in cursive script that reads "Tom Reynolds".

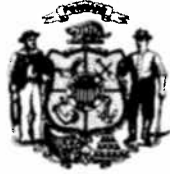
Senator Tom Reynolds

Cc: Members of the Senate Committee on Labor and Election Process Reform  
Mr. Robert Marchant, Senate Chief Clerk  
Hon. Steve Freese, Chair-Assembly Committee on Campaigns and Elections

TGR:pch







Sen. Reynolds  
Attn. Patrick  
306 South

Wisconsin Speaker Pro Tempore  
**Representative Stephen J. Freese**

October 5, 2005

Kevin Kennedy  
State Elections Board  
17 West Main Street, Ste 310  
Madison, WI 53701-2973

Dear Mr. Kennedy;

This letter is to inform you that we would like to meet with you and/or Mr. Dunst regarding concerns we have regarding Clearinghouse Rule 05-061 relating to identification of individual contributions on campaign finance reports.

We will contact you to set up a time to meet.

Sincerely,

STEPHEN J. FREESE  
Chair, Assembly Committee on Campaigns and Elections

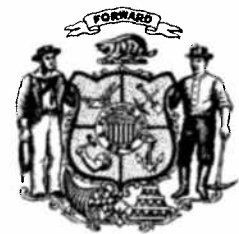
c: Members, Assembly Committee on Campaigns and Elections  
Legislative Council Attorney, Robert Conlin  
Assembly Chief Clerk's Office, Kay Inabnet

**Fifty-First Assembly District**

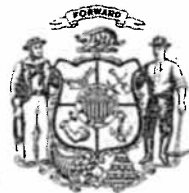
Capitol Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952  
(608) 266-7502 • Toll-Free: (888) 534-0051 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us  
District: 310 E. North • Dodgeville, Wisconsin 53533 • (608) 935-3789



# WISCONSIN STATE LEGISLATURE



**State Senator Tom Reynolds**  
FIFTH SENATE DISTRICT



Office: (608) 266-2512 • Toll Free: (866) 817-6061  
Fax: (608) 267-0367 • In-District: (414) 456-9230

State Capitol, Room 306 South  
P.O. Box 7882, Madison, WI 53707  
Web Site: SenReynolds.com

November 2, 2005

**VIA INTER-DEPARTMENTAL MAIL**

Mr. George Dunst  
Legal Counsel  
Wisconsin State Elections Board  
17 West Main Street, Suite 310  
P.O. Box 2973  
Madison, Wisconsin 53701-2973

Dear George:

Please be advised that the Senate Committee on Labor and Election Process Reform passed a motion this afternoon requesting the Elections Board to modify Clearinghouse Rule 05-061 to address the concerns expressed in the Statutory Authority comments in the Legislative Council Clearinghouse Report on the Rule. Members of the Committee also have concerns about the timeliness of the Rule that uses a \$250 minimum contribution threshold based upon a bill that has not been introduced.

If the Elections Board does not provide a written response agreeing to consider such modifications to Patrick Henneger, committee clerk for the Senate Committee on Labor and Election Process Reform by **noon on Friday, November 4<sup>th</sup>, 2005**, the Senate Committee on Labor and Election Process Reform objects to Clearinghouse Rule 05-061 on the grounds that the rule lacks statutory authority. I am hopeful the Elections Board will agree to modify the Rule and work with Committee members to address their concerns rather than force objection to the Rule. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Tom Reynolds".

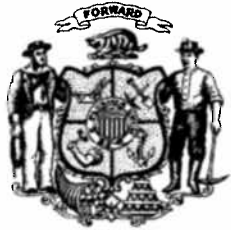
Senator Tom Reynolds

Cc: Mr. Kevin Kennedy, Executive Director-State Elections Board  
Members of the Senate Committee on Labor and Election Process Reform  
Mr. Robert Marchant, Senate Chief Clerk  
Hon. Steve Freese, Chair-Assembly Committee on Campaigns and Elections

TGR:pch



# WISCONSIN STATE LEGISLATURE



# State of Wisconsin \ Elections Board

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17 West Main Street, Suite 310  
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<http://elections.state.wi.us>



CARL HOLBORN  
Chairperson

KEVIN J. KENNEDY  
Executive Director

November 3, 2005

Honorable Tom Reynolds  
State Capitol, 306 South  
P.O. Box 7882  
Madison, WI 53707

Attn: Patrick Henneger

Re: Elections Board Rule CR 05-061

Dear Senator Reynolds:

This letter is in response to your correspondence of November 2, 2005, regarding suggested modifications to the Elections Board's proposed rule, Clearinghouse Rule 05-061. The Elections Board will hold its next meeting on Wednesday, November 30, 2005, and at that time it will consider modifications to its rule. To that end, it would be helpful if your committee could give the Board's staff a draft of proposed modifications that the Board could consider at its meeting.

After the Board's meeting, I will report to you the rule draft that the Board proposes based on the proposed modifications and your committee can then schedule the rule for hearing or other action on the Board's draft.

If you have any questions about this matter, or if I can be of any other assistance, please give me a call. (608) 266-0136.

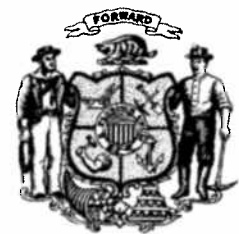
STATE ELECTIONS BOARD

A handwritten signature in black ink, appearing to read "George A. Dunst".

George A. Dunst  
Legal Counsel



# WISCONSIN STATE LEGISLATURE



# State of Wisconsin \ Elections Board

Post Office Box 2973  
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Madison, WI 53701-2973  
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CARL HOLBORN  
Chairperson

KEVIN J. KENNEDY  
Executive Director

November 14, 2005

Honorable Tom Reynolds  
State Capitol, 306 South  
P.O. Box 7882  
Madison, WI 53707

Attn: Patrick Henneger

Re: Elections Board Rule CR 05-061

Dear Senator Reynolds and Mr. Henneger:

This letter is in regard to the Elections Board's consideration of modifications to the Board's proposed rule, CR 05-061, (EIBd 1.46(3)). As I mentioned in my letter of November 3, 2005, the Elections Board will hold its next meeting on Wednesday, November 30, 2005, and at that time it will consider modifications to its rule. The Board's Executive Director has directed that staff memoranda regarding matters that are on the Board's agenda need to be completed by Friday, November 18, 2005. Consequently, to include your Committee's recommended modifications in the Board's materials, and my memorandum of the subject, I will need to have them by Wednesday, November 16, 2005.

In reviewing your letter of November 2, 2005, I noted that your Committee voted to:

*request[ing] the Elections Board to modify Clearinghouse Rule 05-061  
to address the concerns expressed in the Statutory Authority comments  
in the Legislative Council Clearinghouse Report on the Rule*

The comments from the Legislative Council, (to which your letter refers), regarding the Board's statutory authority to promulgate this rule seem to say that the Board's rule, in giving registrant's 60 days (from the due date of the campaign finance report), in which to supply previously omitted contributor information, is not strict enough; i.e., that the Board does not have the authority to give registrants 60 more days in which to comply with s.11.06, Stats. Legislative Council seems to think that "good faith" compliance has to occur by the due date of the report and cannot be extended 60 days:

*Section EIBd 1.46(3)(a) effectively extends by 60 days the time for filing  
a complete report under s.11.06, Stats. For example, if a registrant fails to disclose  
the names of contributors making contributions of \$20 or more by the due date -  
information required by s.11.06(1)(a), Stats., - the rule says that the registrant has  
not violated the reporting requirement if he or she notifies the filing officer of those*

*names within 60 days after the due date of the report. This seems to be at odds with the statutory directive to file reports by certain dates as provided in s.11.20(2) and (4), Stats. Is this the intent of the rule? If so, the statutory authority for this treatment should be fully explained because this application seems to unreasonably strain the concept of "good faith" compliance that the rule claims to be trying to accommodate. If not, what is the intent? Is the rule really intended to apply to all information required by s.11.06(1)(a) and (b), Stats., or just the material addressed in s. ElBd 1.46(1) and (2), i.e., street address and occupation and principal place of business of certain contributors? The latter interpretation would appear to better coincide with the rule's placement in the administrative code.*

The staff's understanding of your committee's objection to the Board's rule is that it ought to give registrants more than 60 days in which to comply with s.11.06, Stats., and that "good faith" means making an effort to obtain information, not, necessarily obtaining that information, as the rule requires. That would seem to be in conflict with the Legislative Council's concerns. The Committee's recommendations to the Board should help to reconcile this apparent conflict.

Also, the Legislative Council, in the last two sentences of its above analysis suggests that the rule should distinguish between information required by par. (1)(a) and par.(1)(b) of s.11.06, Stats., by applying only to the latter requirement (par.(b) and not applying to the former requirement (par.(a)). The statute, however, does not distinguish between compliance with these requirements; and nothing in the Senate Committee's discussion appeared to make a distinction between those paragraphs. The Board's rule does NOT require that a contribution in violation only of par.(a) – name and address of contributor – has to be returned, but it does require that that information be supplied.

Finally, the Board did not intend to predicate promulgation of its rule on the passage of proposed legislation that would amend contributor information limits. Thus, even if that proposed legislation does not pass, the threshold for returning contributions for which contributor information was not obtained would still be \$250. The Board believed that only committees who fail to obtain required information for contributions of that magnitude ought to be required to return them. The Board also believed that virtually all committees have at least name and address information for contributors of \$250 and more; and that that information should make it relatively easy to obtain further information. The Board's staff queries what kind of rule modifications the Board could make with respect to passage or non-passage of the proposed legislation.

If you have any questions about this matter, or if I can be of any other assistance, please give me a call. (608) 266-0136.

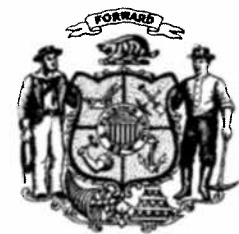
STATE ELECTIONS BOARD

  
George A. Dunst  
Legal Counsel





# WISCONSIN STATE LEGISLATURE



## **Henneger, Patrick**

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**From:** Henneger, Patrick  
**Sent:** Wednesday, November 16, 2005 11:02 AM  
**To:** Dunst, George  
**Subject:** Suggested Modifications to CHR 05-061

Hello George:

I spoke with Senator Reynolds about the proposed changes to CHR 05-061. He feels that describing a "good faith effort" in terms of time does not properly address what is the essence of the standard: effort. To make an effort to is to take action. Therefore, the rule should describe what action constitutes a good faith effort. Senator Reynolds suggests that the standard be set at making two attempts to contact the contributor to get the required information, either by mail or by phone. You could require phone records or return receipts for mailings. The time period for making a good faith effort ends at the time the report is filed with the Elections Board. If you cannot demonstrate a good faith effort prior to the filing of the report, then the campaign must divest itself of the contribution. This approach seems to be in harmony with intent of legislature to allow a good faith effort to suffice if the campaign cannot obtain the required information rather than simply extend the time period to gather the information without any inquiry into the efforts made by the campaign.

I hope the Elections Board finds these suggestions useful when discussing possible modifications to the rule. Please let me know if you have any questions.

Thank you,

Patrick Henneger  
Clerk, Senate Committee on Labor and Election Process Reform  
Office of Senator Tom Reynolds



Read  
11/30/05

**MEMORANDUM:**

**TO:** Persons Interested in a Matter before the State  
Elections Board at its November 30, 2005 Meeting

**FROM:** George A. Dunst, Legal Counsel

**MEETING DATE:** November 30, 2005

**SUBJECT:** The Matter before the State Elections Board in which you  
may be an Interested Person

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Enclosed please find a copy of the memorandum, prepared by the Board's staff to the State Elections Board and submitted to the members of the Board, in regard to a matter in which you are a named or otherwise interested party. Attachments that may be included with the memo given to Board members may not be included herein because they should already be in the parties' possession.

**The Elections Board will meet to consider this matter, and other matters, at its November 2005 special meeting, on WEDNESDAY, NOVEMBER 30, 2005. THE MEETING WILL BE HELD IN THE BROOKFIELD CITY HALL, COMMON COUNCIL CHAMBERS, LOCATED AT 2000 NORTH CALHOUN ROAD, BROOKFIELD, WISCONSIN.**

**The meeting will begin at 9:30 a.m., or as soon thereafter as a quorum is obtained.**

If you and/or your representative wish to be heard on any matter, you and/or your representative should be present at, or about, 9:30 a.m., when personal appearances will be taken on all matters before the Board.

If you wish to submit any additional written materials for the Board's consideration, they should not be in excess of five (5) typewritten pages and must be in the hands of the Board's staff **not later than 1:30 p.m. on the Monday, (November 30, 2005), before the meeting of the Board.** (Earlier delivery is preferred and offers an opportunity for pre-meeting delivery to and reading by the Board's members.)

**If you have any questions or requests regarding this matter, please contact me at 608-266-0136.**

## MEMORANDUM

**TO: ELECTIONS BOARD MEMBERS**

**FROM: GEORGE A. DUNST, LEGAL COUNSEL**

**MEETING DATE: NOVEMBER 30, 2005**

**SUBJECT: RULE RELATING TO DISCLOSURE OF CONTRIBUTOR INFORMATION**

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Reprinted below is a copy of correspondence the Board's staff received from the office of State Senator Tom Reynolds regarding the Elections Board's proposed amendments to rule ElBd 1.46, (Clearinghouse Rule 05-061 - relating to the failure to disclose required contributor information). Senator Reynolds is the Chair of the Senate Committee on Labor and Election Process Reform. The Senate Committee passed a motion requesting that the Elections Board modify Clearinghouse Rule 05-061 and asked for the Board's consent to consider modifications to the rule:

*Please be advised that the Senate Committee on Labor and Election Process Reform passed a motion this afternoon requesting the Elections Board to modify Clearinghouse Rule 05-061 to address the concerns expressed in the Statutory Authority comments in the Legislative Council Clearinghouse Report on the Rule. Members of the Committee also have concerns about the timeliness of the Rule that uses a \$250 minimum contribution threshold based upon a bill that has not been introduced.*

*If the Elections Board does not provide a written response agreeing to consider such modifications to Patrick Henneger, committee clerk for the Senate Committee on Labor and Election Process Reform by **noon on Friday, November 4<sup>th</sup>, 2005**, the Senate Committee on Labor and Election Process Reform objects to Clearinghouse Rule 05-061 on the grounds that the rule lacks statutory authority. I am hopeful the Elections Board will agree to modify the Rule and work with Committee members to address their concerns rather than force objection to the Rule. I look forward to hearing from you.*

With respect to the Board's statutory authority to promulgate CR 05-061, the Legislative Council's Report, to which Senator Reynolds' letter refers, reads as follows:

### 1. Statutory Authority

*Section ElBd 1.46(3)(a) effectively extends by 60 days the time for filing a complete report under s.11.06, Stats. For example, if a registrant fails to disclose the names of contributors making contributions of \$20 or more by the due date - information required by s.11.06(1)(a), Stats., - the rule says that the registrant has not violated the reporting requirement if he or she notifies the filing officer of those names within 60 days after the due date of the report. This seems to be at odds with the statutory directive to file reports by certain dates as provided in s.11.20(2) and (4), Stats. Is this the intent of the rule? If so, the statutory authority for this treatment should be fully explained because this application seems to unreasonably strain the concept of "good faith" compliance that the rule claims to be trying to accommodate. If not, what is the intent? Is the rule really*

*intended to apply to all information required by s.11.06(1)(a) and (b), Stats., or just the material addressed in s. ElBd 1.46(1) and (2), i.e., street address and occupation and principal place of business of certain contributors? The latter interpretation would appear to better coincide with the rule's placement in the administrative code.*

The Board's staff's response to Senator Reynold's notice was to send the following letter to the Senate Committee on Thursday, November 3, 2005:

*Dear Senator Reynolds:*

*This letter is in response to your correspondence of November 2, 2005, regarding suggested modifications to the Elections Board's proposed rule, Clearinghouse Rule 05-061. The Elections Board will hold its next meeting on Wednesday, November 30, 2005, and at that time it will consider modifications to its rule. To that end, it would be helpful if your committee could give the Board's staff a draft of proposed modifications that the Board could consider at its meeting.*

*After the Board's meeting, I will report to you the rule draft that the Board proposes based on the proposed modifications and your committee can then schedule the rule for hearing or other action on the Board's draft.*

*If you have any questions about this matter, or if I can be of any other assistance, please give me a call. (608) 266-0136.*

To attempt to clarify an apparent distinction between the concerns of the Legislative Council and those of the Senate Committee and, particularly, those of Senator Reynolds, the Board's counsel on November 14, 2005 followed the previous correspondence with the following letter:

*Dear Senator Reynolds and Mr. Henneger:*

*This letter is in regard to the Elections Board's consideration of modifications to the Board's proposed rule, CR 05-061, (ElBd 1.46(3)). As I mentioned in my letter of November 3, 2005, the Elections Board will hold its next meeting on Wednesday, November 30, 2005, and at that time it will consider modifications to its rule. The Board's Executive Director has directed that staff memoranda regarding matters that are on the Board's agenda need to be completed by Friday, November 18, 2005. Consequently, to include your Committee's recommended modifications in the Board's materials, and my memorandum of the subject, I will need to have them by Wednesday, November 16, 2005.*

*In reviewing your letter of November 2, 2005, I noted that your Committee voted to:*

*request[ing] the Elections Board to modify Clearinghouse Rule 05-061 to address the concerns expressed in the Statutory Authority comments in the Legislative Council Clearinghouse Report on the Rule*

*The comments from the Legislative Council, (to which your letter refers), regarding the Board's statutory authority to promulgate this rule, seem to say that the Board's rule, in*

giving registrant's 60 days (from the due date of the campaign finance report), in which to supply previously omitted contributor information, is not strict enough; i.e., that the Board does not have the authority to give registrants 60 more days in which to comply with s.11.06, Stats. Legislative Council seems to think that "good faith" compliance has to occur by the due date of the report and cannot be extended 60 days:

Section ElBd 1.46(3)(a) effectively extends by 60 days the time for filing a complete report under s.11.06, Stats. For example, if a registrant fails to disclose the names of contributors making contributions of \$20 or more by the due date – information required by s.11.06(1)(a), Stats., - the rule says that the registrant has not violated the reporting requirement if he or she notifies the filing officer of those names within 60 days after the due date of the report. **This seems to be at odds with the statutory directive to file reports by certain dates as provided in s.11.20(2) and (4), Stats. Is this the intent of the rule?** If so, the statutory authority for this treatment should be fully explained because this application seems to unreasonably strain the concept of "good faith" compliance that the rule claims to be trying to accommodate. If not, what is the intent? Is the rule really intended to apply to all information required by s.11.06(1)(a) and (b), Stats., or just the material addressed in s. ElBd 1.46(1) and (2), i.e., street address and occupation and principal place of business of certain contributors? The latter interpretation would appear to better coincide with the rule's placement in the administrative code.

The staff's understanding of your committee's objection to the Board's rule is that it ought to give registrants more than 60 days in which to comply with s.11.06, Stats., and that "good faith" means making an effort to obtain information, not, necessarily obtaining that information, as the rule requires. That would seem to be in conflict with the Legislative Council's concerns. The Committee's recommendations to the Board should help to reconcile this apparent conflict.

Also, the Legislative Council, in the last two sentences of its above analysis suggests that the rule should distinguish between information required by par. (1)(a) and par.(1)(b) of s.11.06, Stats., by applying only to the latter requirement (par.(b) and not applying to the former requirement (par.(a)). The statute, however, does not distinguish between compliance with these requirements; and nothing in the Senate Committee's discussion appeared to make a distinction between those paragraphs. The Board's rule does NOT require that a contribution in violation only of par.(a) – name and address of contributor – has to be returned, but it does require that that information be supplied.

Finally, the Board did not intend to predicate promulgation of its rule on the passage of proposed legislation that would amend contributor information limits. Thus, even if that proposed legislation does not pass, the threshold for returning contributions for which contributor information was not obtained would still be \$250. The Board believed that only committees who fail to obtain required information for contributions of that magnitude ought to be required to return them. The Board also believed that virtually all committees have at least name and address information for contributors of \$250 and more; and that that information should make it relatively easy to obtain further information. The Board's staff queries what kind of rule modifications the Board could make with respect to passage or non-passage of the proposed legislation.

In response, on November 16, 2005, the Senate Committee sent the following reply to the Board:

*Hello George:*

*I spoke with Senator Reynolds about the proposed changes to CHR 05-061. He feels that describing a "good faith effort" in terms of time does not properly address what is the essence of the standard: effort. To make an effort to is to take action. Therefore, the rule should describe what action constitutes a good faith effort. Senator Reynolds suggests that the standard be set at making two attempts to contact the contributor to get the required information, either by mail or by phone. You could require phone records or return receipts for mailings. The time period for making a good faith effort ends at the time the report is filed with the Elections Board. If you cannot demonstrate a good faith effort prior to the filing of the report, then the campaign must divest itself of the contribution. This approach seems to be in harmony with intent of legislature to allow a good faith effort to suffice if the campaign cannot obtain the required information rather than simply extend the time period to gather the information without any inquiry into the efforts made by the campaign.*

*I hope the Elections Board finds these suggestions useful when discussing possible modifications to the rule. Please let me know if you have any questions.*

As Board members can see, Senator Reynolds' suggested changes call for a more stringent treatment of omitted contributor information than the Board's rule does:

*The time period for making a good faith effort ends at the time the report is filed with the Elections Board. If you cannot demonstrate a good faith effort prior to the filing of the report, then the campaign must divest itself of the contribution.*

Under the Senator's proposed modification, if the campaign finance report does not document the registrant's two attempts to contact the contributor to obtain the required information, the registrant would have to divest itself of the contribution. Conversely, if the campaign finance report does document two attempts to contact the contributor to obtain the required information, the registrant has completed the report in "good faith," within the meaning of s.11.06(5), Stats.<sup>1</sup> Presumably, the consequence of having made a good faith effort is that the registrant is considered to have complied with s.11.06(5), Stats., and therefore, does not have to make any further efforts to obtain the information if the contributor has not supplied it.

Senator Reynolds' modifications would obviate the need for a 60-day follow-up period because the contributor information, or the evidence of a good faith effort, has to be submitted by the due date for the report. The registrant does not get any post-report grace period in which to obtain the information or

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<sup>1</sup> Section 11.06, Stats., in sub.(5) provides that the standard applicable to obtaining the information required in subs. (1)(a) and (1)(b) (of s.11.06, Stats.) is: "a good faith effort to obtain all required information."

**5) Report must be complete.** A registered individual or treasurer of a group or committee shall make a good faith effort to obtain all required information. The first report shall commence no later than the date that the first contribution is received and accepted or the first disbursement is made. Each report shall be filed with the appropriate filing officer on the dates designated in s. 11.20. The individual or the treasurer of the group or committee shall certify to the correctness of each report. In the case of a candidate, the candidate or treasurer shall certify to the correctness of each report. If a treasurer is unavailable, any person designated as a custodian under s. 11.05 (3) (e) may certify to the correctness of a report.



to document his/her good faith efforts. On the other hand, the registrant may be found in compliance with s.11.06, Stats., without ever obtaining the contributor information or returning the contribution.

Recommendation:

The Board needs to vote to accept or reject the proposed modifications and to decide whether it wishes to make any other revisions in the proposed rule. The Board could vote to submit the rule as written, taking its chances on the possibility of legislative objection.

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Also attached to this memorandum, for purposes of background only, is the last memorandum (December 1, 2004) that the Board's counsel wrote regarding the proposed rule. At the December 1, 2004 meeting, the Board extended the time period in which a committee could obtain required information to 60 days (from 45 days). And the Board defined divestiture of an unacceptable contribution to 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. Finally, the Board added to the rule the provision that return of a contribution may be in addition to imposition of any civil penalties under s.11.60, Stats., if the egregious nature of the circumstances warrant prosecution.

**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.***

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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), Stats<sup>2</sup>, 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.

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

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<sup>2</sup> *11.24 Unlawful political contributions.*

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

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.)

***EIBd 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.***