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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-087

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

The rule imposes registration and reporting requirements on organizations, including corporations and associations that make independent disbursements. Chapter 11, Stats., imposes registration and reporting requirements on committees. Section 11.01 (4), Stats., defines “committee” as any *person* other than an individual and any combination of two or more persons, permanent or temporary, that makes or accepts contributions or makes disbursements, whether or not engaged in activities that are exclusively political, except that a “committee” does not include a political “group.” “Person” is not defined in ch. 11, Stats.; however, s. 990.01 (26), Stats., defines “person” to include all partnerships, *associations*, and *bodies politic or corporate*.

It appears that under ch. 11, Stats., registration and reporting requirements already apply to a corporation or association that makes or accepts contributions or makes disbursements. That is, the corporation or association would be treated as a committee. An independent disbursement under the rule may be a disbursement for purposes of ch. 11, Stats., and subject to ch. 11., Stats., registration and reporting requirements. Consequently, the rule creates an alternate set of registration and reporting requirements that may apply to the same activity that is already subject to registration and reporting requirements under ch. 11, Stats.

In addition, for independent disbursements that are subject to registration and reporting requirements under the rule, but not to ch. 11, Stats., requirements, the rule creates a new system

of registration and reporting for independent disbursements that are not regulated by ch. 11, Stats.

In its report to the Legislature, the board should clearly explain the following matters:

- a. How the regulation of the new entity, “organization,” under the rule differs from the regulation of a committee under ch. 11, Stats.
- b. The statutory authority for treating an “organization” differently than a committee under ch. 11, Stats.; the decision of the U.S. Supreme Court in *Citizens United v. FEC*, 558 U.S. \_\_\_ (dated January 21, 2010) may have invalidated portions of s. 11.38, Stats., but it did not alter the statutory structure under which the board administers and implements ch. 11, Stats. In other words, if *Citizens United* requires alterations in ch. 11, Stats., what power does the board, rather than the Legislature, have to effect those changes?

## **2. Form, Style and Placement in Administrative Code**

- a. In the rule summary, the heading titled “Place where comments are to be submitted and deadline for submission” should be included. [s. 1.02 (2) (a) 12., Manual.]
- b. In s. GAB 1.91 (4) (e), the paragraph should be replaced with the following: “A signature of the treasurer for the designated depository account of the organization and a certification that all information contained in the registration statement is true, correct and complete.”

## **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In the “statutes interpreted” section of the rule summary, “and” should be inserted between “11.38,” and “11.513.”
- b. In the “comparison with rules in adjacent states” section of the rule summary, it appears that the references to the Illinois Administrative Code should instead be to the Illinois statutes. In addition, chapter 351-4.27 (7) of the Iowa Administrative Code does not exist. Lastly, the agency should include a citation to support the assertion that Michigan statutes contain certain registration, reporting, and disclaimer requirements upon exceeding \$500 in contributions or expenditures.
- c. In s. GAB 1.91 (9), “s. 11.30 (1) and (2) (a) and (d), Stats.” should replace “§ 11.30 (1); (2) (a) and (d), Wis. Stats.” [s. 1.07, Manual.]

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In the title on the first page, “PROPOSED” should replace “PROPSSED.”
- b. In the “Summary of, and comparison with, existing or proposed federal regulations” section of the rule summary, the following changes should be made:

- On the second line, the acronym “FEC” should be replaced by the name “Federal Election Commission.”
- On the third line, “who” should be inserted between “and” and “make.”
- On the sixth line, “in the aggregate” should be inserted between “expenditure” and “of.”
- On the eighth line, “in the aggregate” should be inserted between “expenditure” and “of.”

c. In the “comparison with rules in adjacent states” section of the rule summary, it appears that “\$750.00” should replace “\$100.00” when describing the Iowa Administrative Code provisions.

d. In s. GAB 1.91 (1), the definitions should be arranged in alphabetical order. [s. 1.01 (7), Manual.]