



# Wisconsin Ethics Commission

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## Report From Agency

### REPORT

OF

### ETHICS COMMISSION

Clearinghouse Rule 17-038  
ETH 21  
Wisconsin Administrative Code

The Ethics Commission proposes an order to repeal ch. ETH 21, relating to requests for written advice issued on behalf of the Ethics Commission.

#### ANALYSIS

1. **Proposed rule:** see proposed order attached immediately following this report.
2. **Statutes interpreted:** s. 19.46(2)(b), Stats.
3. **Statutory authority:** The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

**11.1304 Duties of the ethics commission.** The commission shall:  
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

**19.48 Duties of the ethics commission.** The commission shall:  
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

**227.11 Extent to which chapter confers rule-making authority.**  
(2) Rule-making authority is expressly conferred on an agency as follows:

*Wisconsin Ethics Commissioners*

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

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*Administrator*  
Brian M. Bell, MPA

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

4. **Explanation of agency authority:** The Ethics Commission may authorize the commission administrator to issue informal opinions on its behalf. However, it is not required do so via administrative rule as its policy only concerns the internal management of the agency and does not affect private rights or interests.
5. **Related statute(s) or rule(s):** N/A.
6. **Plain language analysis:** This rule repeals the conditions imposed on issuance of informal opinions currently in the administrative code. The Commission adopted a new internal policy on March 7, 2017, setting forth the conditions under which the staff of the commission may respond to a request for advice on behalf of the Commission.
7. **Summary of, and comparison with, existing or proposed federal regulations:** The Federal Election Commission (FEC) issues advisory opinions to any entity that is unclear about the application of FECA to its prospective activities. If the activity had been prescribed previously, the FEC will advise within the relevant advisory opinion. 52 U.S.C. § 30108; 11 CFR § 112. Informal advice is given for procedural matters such as which reports to file, or how to register a committee, but not in regards to the application of opinions or statutes.
8. **Comparison with similar rules in adjacent states:**

Illinois: The Illinois State Board of Elections issues formal advice only within a narrow scope of campaign finance law. All other advice is given on an informal basis by staff. ILL. ADMIN. CODE tit. 26 § 125.710.

Iowa: In practice the Ethics and Disclosure Board director and staff issue informal advice which does not hold the same force as advice requested and given through the declaratory order process. Advice is only binding when it is given as a declaratory order in response to a petition regarding the applicability of statutes, policies decisions, or orders. IOWA ADMIN. CODE r. 351—12.7(1).

Michigan: Permits staff to issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. MICH. COMP. LAWS § 169.215(2).

Minnesota: Permits staff to issue nonbinding informal advice. Formal advisory opinions are issued only to parties covered by the request and are binding on the board and subsequent proceedings regarding only the party or parties involved. MINN. STAT. § 10A.02 subd. 12 (2016).

9. **Summary of factual data and analytical methodologies:** N/A

10. **Analysis and supporting documentation used to determine effect on small businesses:**  
N/A

11. **Effect on small business:** N/A

12. **Agency contact person:**

David P. Buerger  
David.Buerger@wisconsin.gov  
(608) 267-0951

13. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

14. **List of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency:** No persons appeared for or against the proposed rule at the hearing held by the agency on June 7, 2017.

15. **Summary of public comments to the proposed rule and the agency's response to the comments:** No public comments were received by the agency.

16. **Explanations of modifications to the proposed rule as a result of the public comments or testimony received at public hearings:** N/A

17. **Legislative Council staff clearinghouse report:** See Clearinghouse report to Agency attached immediately following this report.

18. **Response to Legislative Council staff recommendations in the clearinghouse report:** The Ethics Commission agrees with and adopts the suggested changes presented in the Legislative Council report.