

## Clearinghouse Rule 17-038

SS# 033-17, Wisconsin Administrative Register No. 735B, 3/27/17

### WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

#### INTRODUCTORY CLAUSE

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

#### RULE SUMMARY

- A. **Statutes interpreted:** s. 19.46(2)(b), Stats.
- B. **Statutory authority:** Wisconsin law provides for the Commission to authorize the commission administrator or his or her designee to issue informal advisory opinions on the Commission's behalf.

s. 19.46(2)(b), Stats.:

#### **19.46(2)(b) Conflict of interest prohibited; exception.**

1. The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.
2. Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.
3. Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.

The Ethics Commission also 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:

(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.

C. **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.

D. **Related statute(s) or rule(s):** N/A.

E. **Plain language analysis:** This rule repeals the conditions imposed on issuance of informal opinions currently in the administrative code. The Commission adopted a new 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.

F. **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.

G. **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).

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

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

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

**K. Agency contact person:**

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**L. 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.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

## **TEXT OF RULE**

SECTION 1. Chapter ETH 21 is repealed.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.