



# Wisconsin Ethics Commission

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December 12, 2017

Co-Chair Nass, Co-Chair Ballweg, and members of the Joint Committee for Review of Administrative Rules:

My name is Brian Bell and I am the Administrator of the Ethics Commission. On behalf of Chairperson David Halbrooks, Vice-Chairperson Katie McCallum and the members of the Ethics Commission, thank you for the opportunity to speak with you today regarding CR 17-038.

## **CR 17-038 (ETH 21)**

The Ethics Commission is seeking repeal of this rule as it is not necessary under current statutory construction. This rule also does not reflect the bipartisan approach to how the Chair and Vice-Chair operate, or the Commission's ability to establish and modify internal policies and procedures.

Clearinghouse Rule CR 17-038 would repeal chapter ETH 21 in its entirety. The Ethics Commission inherited this rule from the Government Accountability Board (GAB) pursuant to 2015 Act 118, which transferred the administrative rules of the GAB to the appropriate successor commission. In this case, as both commissions retain the ability to provide written advisory opinions, GAB 21 was duplicated and transferred to both commissions. Both commissions now seek to repeal these administrative rules (see CR17-042).

The Ethics Board originally created this rule in 1976 to formalize the conditions it chose to impose on the issuance of advisory opinions by its director pursuant to WIS. STAT. § 19.46(2) (1975). This rule transferred to the GAB upon its creation, and has then transferred to the Ethics Commission. However, the underlying statute, in its various incarnations, has always permitted the Board to set the conditions under which the agency head was delegated permission to issue advisory opinions. This delegation of authority to the administrator to issue an advisory opinion is a matter of internal agency administration and not a matter of statutory interpretation, which would necessitate an administrative rule. The delegation of authority by the Commission does not alter, abrogate, or otherwise affect the ability of a person to request an advisory opinion. Requests for advisory opinions must still follow the procedure established by WIS. STAT. § 19.46(2).

As an additional safeguard, even when the Ethics Commission delegates the authority to issue an advisory opinion, state law requires the Administrator to present each informal advisory opinion issued by the Administrator to the Commission at its next meeting. At that time, the Commission may modify, reject, or approve of the informal opinion. Finally, Act 118 also requires that the Commission adopt or reaffirm all internal policies and procedures each year as a part of its annual report, which currently includes the delegation of authority to issue advisory opinions.

Again, we would like to thank you all for the opportunity to speak with you regarding these rules, and we will do our best to address any questions you might have.

*Wisconsin Ethics Commissioners*

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

*Administrator*

Brian M. Bell, MPA