

Legal defense funds

GENERAL RULE

Except for the transfer of campaign contributions to a defense fund for the limited purposes permitted under Wisconsin's campaign finance laws, *Wisconsin Statutes* forbid a state government official to use his or her government position to seek or obtain contributions to a so-called defense fund to pay personal legal expenses. Use of government position to obtain financial gain and personal advantage for oneself is precisely what Wisconsin's Code of Ethics for Public Officials forbids.

The State of Wisconsin Government Accountability Board administers statutes that prohibit a state governmental official to use his or her government position to obtain money or anything of substantial value for the private benefit of the official or the official's family. [§19.45(2), *Wisconsin Statutes*] The *Statutes* further prohibit an official's solicitation or acceptance of money that could reasonably be expected to influence the official's vote, actions, or judgment or could reasonably be considered a reward for the official's past action or inaction. [§19.45(3), *Wisconsin Statutes*] The *Statutes* also forbid an official to solicit or accept money from a lobbyist or from a business or organization that employs a lobbyist to affect Wisconsin's laws. [§13.625 (3), *Wisconsin Statutes*]

An official's use of the title or prestige or power of government office to obtain money from others in order to pay the official's private, personal expenses would be patently offensive and illegal.

The statutes that the Government Accountability Board administers create no exception for a "legal defense fund". It is equally improper for a state government official to make use of his or her government position to obtain money for the official's vacation fund, please-pay-my-home-mortgage fund, who-will-pay-my-child's-tuition fund, or I-would-like-to-remodel-my-house fund.¹

LIMITED EXCEPTION: LEGAL DEFENSE FUND LIMITED TO DEFENSE OF VIOLATIONS ALLEGED UNDER CHAPTERS 11 AND 12, WISCONSIN STATUTES

Wisconsin Statutes permit a state government official who is being investigated for or charged with a violation of campaign finance laws [chapter 11, *Wisconsin Statutes*] or prohibited election practices [chapter 12, *Wisconsin Statutes*] to establish a "legal defense fund" for expenditures supporting or defending the candidate while that person is being investigated for, or charged with, or convicted of a violation of those chapters.

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¹ The prohibition is on "use of office or position" for private advantage. An official may accept financial support from a parent, grandparent, other family members, or even a close friend if the support is unrelated to the recipient's holding or having held a government position.

The director of the State of Wisconsin Elections Division has authorized the Government Accountability Board to say that the Elections Board's staff concurs in this guideline insofar as it interprets chapter 11, *Wisconsin Statutes*.

A candidate may transfer a contributor's campaign contribution to a legal defense fund to support or defend a candidate who is being investigated for, or is charged with, or has been convicted of violating campaign finance laws or prohibited election practices if, but only if, the contributor consents. [§11.64, *Wisconsin Statutes*]

LOBBYISTS

A lobbyist may not contribute to a legal defense fund. A lobbyist who has previously contributed to an official's campaign may not authorize the transfer of the lobbyist's campaign contribution to a legal defense fund. [§13.625, *Wisconsin Statutes*]

REPORTING CONTRIBUTIONS TO A LEGAL DEFENSE FUND

An official required to file a Statement of Economic Interests with Wisconsin's Government Accountability Board must identify each person who, during the prior year, contributed more than fifty dollars to a "legal defense fund" established under §11.64 to benefit the official.

Note: This guideline is limited to the application of Wisconsin's lobbying laws and Code of Ethics for Public Officials, both of which are administered by the State of Wisconsin Government Accountability Board's Ethics and Accountability Division. Questions about whether and how an individual may transfer contributions from a campaign account to a legal defense fund should be addressed to the State of Wisconsin Elections Division.