

ORDER OF THE WISCONSIN ETHICS COMMISSION
CR 17-038

The Wisconsin Ethics Commission proposes an order to amend ETH 21.30, 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:

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:

(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, or his or her designee, to issue informal opinions on its behalf.

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

E. Plain language analysis: This rule updates the conditions under which the staff of the Commission may respond to a request for advice on behalf of the Commission. These changes make the rule consistent with the internal policy adopted by the Commission on March 7, 2017, allowing the Administrator of the Commission (or the Staff Counsel upon delegation by the Administrator) to issue informal opinions on behalf of the Commission if: (1) the request is received in writing, (2) the advice is provided in writing, and (3) the advice is consistent with all applicable formal advisory opinions issued by the Commission, statute or other law, and case law as required by s. 19.46 (2) (b) 1., Stats.; as well as United States and Wisconsin constitutional law.

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. ETH 21.30 is amended to read:

ETH 21.30 Requests for written advice. ~~When delay is of substantial inconvenience or detriment to~~ If a person requesting requests in writing the ethics commission's written advice regarding the propriety of a matter to which the person is or may become a party, the ethics commission's ~~director~~ administrator, or staff counsel upon delegation by the administrator, may, ~~with the advice and consent of the chair, or if the chair is unavailable, with the advice and consent of the vice chair, or if the vice chair is unavailable, with the advice and consent of any member of the ethics commission,~~ advise the state public official person in writing. The written advice shall be consistent with all applicable formal advisory opinions issued by the commission, statute or other law, and case law as required by s. 19.46 (2) (b) 1., Stats. as well as the United States and Wisconsin constitutional law. Written advice prepared by the ~~director~~ administrator or staff counsel pursuant to this rule has the full force and effect of written advice given by the ethics commission.

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.