

December 3, 2018

E-Mail: Daniel.Carlton@wisconsin.gov

Daniel A. Carlton, Jr., Administrator
Wisconsin Ethics Commission

Re: Limited Lobbying Principal

Dear Mr. Carlton:

The entire Board of the Association of Career Employees (ACE) appreciates the thoughtfulness of your November 13, 2018 correspondence with President Drew and our Board Member Thiel.

ACE was not aware of the work-around that you so clearly explained by simply registering as a limited principal without a lobbyist. We believe that work-around is a reasonable interim solution that will enable organizations such as ACE to use the Eye on Lobbying System to register its interests in legislation and rulemaking.

ACE commends the Ethics Commission policy decision and efforts to redesign its website ***for anyone*** to use the system to register their interests. This will enable responsible organizations like ACE to communicate their position in a manner readily available to the public and officials.

ACE again requests that the Ethics Commission revisit the previous settlement in closed session December 11, 2018. This was an unfortunate and inadvertent identification in a lobbyist-related audit that should and could have been avoided through the work-around and under the proposed Commission website improvements.

We look forward to working cooperatively with you and the Commission in the future.

Bob Jordan

Executive Director

Carlton, Daniel - ETHICS

Nov 13, 2018,
4:08 PM (13 days
ago)

Mr. Thiel,

Thank you for your response to my email. Without discussing confidential information, I think that I can give you and the members of ACE some guidance for the future.

First, the Commission's open session memo for the June 19th meeting addressed the question of whether limited lobbying principals and lobbyists for limited lobbying principals are subject to the prohibitions in Wis. STAT. §13.625(1m). That was the impetus behind Commission's note in the green shaded part of your correspondence. When we use statutorily defined terms, on our website and in other communications, we mean to use that term as it is defined in statutes. To do otherwise would render our communications meaningless. A "lobbyist," whether they're acting on behalf of a limited principal or a "regular" principal, is a lobbyist because he or she is paid to lobby. Under the plain language of s. 13.625(1m), there's no exception for lobbyists of limited principals. It just says that "no lobbyist may..." So, applying the definition of "lobbyist" to the note on our website, that note means that if you're paid to lobby for a limited lobbying principal, you are subject to the same restrictions as any other lobbyist. Understanding that we mean the statutory term when we say lobbyist, the note is technically correct.

Second, and what I suspect really is the question for ACE going forward, is how to register an interest in legislation and rulemaking. The Eye on Lobbying site was set up only to allow lobbyists and principals to use the "register an interest" feature. As I understand it, for years there have been a few people/groups that weren't lobbyists or principals who have wanted to register interests. Since the website didn't offer them that functionality, a work-around was offered to them and they were advised that they could register **as a limited principal** so that they can use the system to register their interests. One of the weaknesses of this workaround occurs when creating a limited principal. Specifically, the system takes the user to the screen where they identify lobbyists. Some users may not realize this, but you can actually skip that part and go on to use the system in the same way as full lobbying principals can, including registering an interest. If a user does identify a person as a "lobbyist," we have to assume that the limited principal is paying them. We don't have any information at our disposal to the contrary. But, by not identifying a lobbyist, they avoid getting identified in a lobbyist-related audit. (As an aside- they still might receive an email from us asking if they really intended to not designate a lobbyist.)

One of the great things about the new website that will be completed this summer is the functionality **for anyone** to register their interests. That will resolve the issue that necessitated the work-around. However, until then we need to find an approach that will work for all parties involved. I understand that, amongst other things, the budget bill will be a hot topic in the early part of the session. We're mindful of how important communication on that, and all other legislation, is. My initial reaction was to discourage use of the aforementioned work-around. However, upon further reflection, that could significantly reduce the ability of organizations like ACE to communicate with the public and officials on important matters. In light of the fact that we're trying to encourage speech and allow all to register interests, that doesn't make sense. The other option is to continue to allow organizations to use the work-around. **If we continue to use the work around, the**

limited principal should not designate any person as a lobbyist if it does not pay any person to lobby. As I mentioned above, this will allow ACE to register its interests and should avoid any person getting identified in any lobbyist-related audits.

I don't know for sure whether this will prevent all problems from occurring until the new website is up. So, if we continue to utilize this workaround, it will have to be with the understanding that good communication is going to be required on everyone's part. Of course, we'll do everything we can in our power to avoid problems.

I hope that this addresses the concerns that you and ACE have going forward. I'm not sure how you'd like to proceed, but I'm looking forward to working with you to find solutions. I'm available any time you have questions or concerns. Please do not hesitate to reach out.

Sincerely,

Dan
Daniel A. Carlton, Jr.
Administrator

Wisconsin Ethics Commission
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From: "Carlton, Daniel - ETHICS" <Daniel.Carlton@wisconsin.gov>

Subject: ACE Communications

Date: November 13, 2018 at 4:08:24 PM CST

To: Sally Drew <sally_drew@mac.com>

Ms. Drew,

As you know, ACE has asked for clarification on issues surrounding registered limited principals. I just responded to that inquiry and "cc'd" you on the response. Since Mr. Thiel isn't your lawyer, I'm writing under separate cover to you to address a matter with you. Specifically, the purpose of my email to you is to advise you that the Commission will revisit the issuance of your settlements at the December 11, 2018, meeting. Based on your previous communications with us, it appears that the matter should be reconsidered. The Commission will do so in closed session. The Commission will have the option to rescind the settlements and enter a finding that no violation occurred or the Commission can allow the settlement to stand.

Should you have any questions, please do not hesitate to call me. My direct line is [267-0715](tel:267-0715).

Sincerely,

Dan Carlton
Daniel A. Carlton, Jr.
Administrator

Wisconsin Ethics Commission
Campaign Finance | Lobbying | Ethics

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Jim Thiel <thiel.jim65@gmail.com>

Tue, Oct
23, 12:40
PM

to tpackard

Hi Tamara,

The Association of Career Employees [ACE] has a legal and policy question regarding the Wisconsin Ethics Commission imposing penalties on persons who are not principals or lobbyists, as defined by statute.. **The ACE Board has asked me to follow up with you to see if we can get this issue on the Commission's agenda for discussion at its next meeting which we believe is set for December 11th.. Can you get this issue on the agenda for discussion? See attached letter of September 25, 2018.**

The issue arises when a small organization wishes to use the eye on lobbying site to indicate its position on a bill. The organization is not a "principal" as defined in 13.62(12) because it is neither a person or an association that employs a lobbyist. The association's President is not a "lobbyist" as defined by 13.62(11) as she is not employed nor receives any compensation. Small organizations avail themselves of the \$20 registration fee as allowed by the Wisconsin Ethics Commission:

"Organizations which intend to spend less than \$500 in lobbying-related expenditures in a calendar year may register as limited lobbying principals. This \$500 limit includes portions of salary attributable to lobbying. The fee to register as a limited lobbying principal is \$20. In the event that a limited lobbying principal's lobbying expenditures exceed \$500 in a calendar year, the organization is required to notify the Wisconsin Ethics Commission and pay the difference between the two registrations (\$355) within 10 days of exceeding the threshold."

That is not the problem. The problem is the note and actions of the Commission when attempting to impose penalties on persons and organizations that avail themselves of this opportunity. The inconspicuous Note on the Commission's web site reads as follows:

"NOTE: lobbyists representing limiting lobbying principals are prohibited by the same statutes as lobbyists of full lobbying principals."

There is no statutory authority for that statement nor authority for the Ethics Commission's attempted imposition of penalties on associations and persons that are not statutory principals or lobbyists.

Jim (James S.) Thiel, Attorney at Law

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