

Richmond, Kyle

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Tuesday, August 29, 2006 9:33 AM
To: Kasieta, Robert; Holborn, Carl; Dwyer, Kerry
Subject: SEB
Importance: High

Bob, Carl and Kerry, in my rush yesterday, I screwed up on my initial review of the JCAR letter. The JCAR does claim that the reason they suspended the Emergency Rule was because of

1. An absence of statutory authority, and
2. Arbitrariness and capriciousness, or imposition of an undue hardship.

Again, I think the JCRAR suspension is without any basis in fact or law since all your Emergency Rule did was restate the current campaign finance law in Wisconsin i.e. If anyone wants to transfer fed to state money they must do it in compliance with Wisconsin law. A novel idea.

I hardly can understand how that statement, reaffirming the current statutory law in Wisconsin is either without statutory authority or is arbitrary and capriciousness or.... The PAC Registration and PAC limits are the current law in Wisconsin and should be enforced. If the legislature wants to change WI Campaign Finance Laws to do away with PAC limits or registration requirements they need to formally introduce legislation and not subvert WI law by using backdoor methods.

Bob, I did speak with Carl yesterday and he is on board. Carl suggested that the SEB give Green an opportunity to get the out of state PAC's registered so the SEB looks reasonable. I ran this by the powers that be and was given a "green" light on this idea. We were thinking of giving Green one week to get the out of state PAC's registered in WI. If not, then the money would need to be divested immediately and he could be fined and referred to the DA.

The structure as was outlined to me in Madison is that we need to find the following and in this order:

1. **Bottom line - Green has a PAC limit like any other Gov candidate i.e. \$485,000. When Green transferred his 1.3 Million dollars in January 2005 the PAC money that he transferred into his State account should we counted towards that PAC limit.** That Green must divest himself of all PAC monies in excess of the PAC limit of \$485,000 and be fined \$18,754.50 for accepting \$182,545 in excess PAC money (\$500.00 fine plus 10% of the overage):
2. **Bottom line -Non-Registered PAC's - a finding that he wrongfully accepted monies from PAC's not registered in WI.** Nonetheless, the SEB will give him 7 days to get those non-registered PAC's registered in WI. If any non-registered PAC's do not get registered in the 7 days, Green will have to divest his campaign of those monies and will be fined accordingly. (\$500 multiplied by the number non-registered PAC's after 7 days)
3. A finding that Administrative Rules cannot be interpreted in such a manner as to conflict with WI Campaign Finance laws. That the Wisconsin Legislature by intentionally failing to in act the JCAR proposed legislation (to kill the emergency rule) in essence disagreed with the emergency

rules suspension. That the JCAR failed to properly suspend the emergency rule since the reasons that it gave were not supported by the facts or law. A finding that Green spent all of his dirty money is without merit. You cannot violate WI Campaign finance laws (by having money in violation of the law) and then get rid of monies that you should not have had in the first place and argue that you cannot be fined since you already spent the money. Like my friend and former SEB Board member David Halbrooks said about this issue yesterday, "If you steal money and get caught you cannot tell the judge that you already spent the money and therefore do not have to give it back."

These are some ideas of the big picture. You are all much more accomplished attorneys than I. Please feel free to rework these ideas to implement the above, but we need to at the very least get the two bottom line points in #1 & #2 above.

I am free anytime day or night to do a telephone conference on this. Cell 414.333.9700, home 414.540.2204. We need to keep Sherwin out of the loop as I do not want to run into a violation of the open meetings laws.

Attorney Michael S. Maistelman
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cell -
414-333-9700

~~Handwritten signature~~

From: Kerry Dwyer
To: Michael S. Maistelman
Date: 8/24/2006 7:30:22 PM
Subject: Re: Follow the law when it is good for me but not when it is not....

Hi Mike,
I have not been trying to blow you off, but have been ridiculously busy. I am out of the office until Tuesday, but will try to call you if I have a chance before Wednesday.
Kerry

Kerry E. Dwyer
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111 E. Wisconsin Avenue, Suite 1400
Milwaukee, WI 53202

Phone: 414-276-5000
Fax: 414-276-6581

Kerry Dwyer - Fwd: Fwd: FW: Letter

From: "Michael S. Maistelman" <msmlaw@execpc.com>
To: <kerry.dwyer@wilaw.com>, <carl.holborn@wilaw.com>
Date: 8/28/2006 4:04 PM
Subject: Fwd: Fwd: FW: Letter

Carl & Kerry. I am in Madison all day today trying to make sure we are set for our vote to ban's Green money on Wed. I had a good meeting with Bob Kasieta and he is on Board with the arguments that we have discussed including the one below.

Attached are the letters from the JCAR regarding the suspension of the Emergenncy Rule. As I suspected the JCAR failed to suspend the SEB rule pursuant to Wis. Stats. Sec. 227.26(2)(d) entitled "Temporary suspension of rules" which provides: The committee may suspend any rule by a majority vote of a quorum of the committee. A rule may be suspended only on the basis of testimony in relation to that rule received at a public hearing and only for one or more of the reasons specified under s. 227.19 (4) (d).

Wis. Stats. Sec 227.19(4)(d) provides: Committee action. A committee, by a majority vote of a quorum of the committee during the review period under par. (b), may object to a proposed rule for one or more of the following reasons: 1. An absence of statutory authority, 2. An emergency relating to public health, safety or welfare, 3. A failure to comply with legislative intent, 4. A conflict with state law, 5. A change in circumstances since enactment of the earliest law upon which the proposed rule is based, or 6. Arbitrariness and capriciousness, or imposition of an undue hardship.

The JCAR motion failed to specify the statutory reasons under Wis. Sec. 227.19(4) to suspend the rule and therefore, the rule was never properly suspended and was in affect when Green spent his money.

The JCRAR really had no basis to suspend the emergency rule, since the emergency rule simply stated what was already the law, i.e. If people transfer money from Fed/State it had to comply with Wisconsin Law.

Thanks so much for your support.

Mike

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Richmond, Kyle

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Monday, August 28, 2006 3:53 PM
To: Kasieta, Robert
Subject: Fwd: FW: Letter

Bob. Thanks for meeting today. Attached are the letters from the JCAR regarding the suspension of the Emergency Rule. As I suspected the JCAR failed to suspend the SEB rule pursuant to Wis. Stats. Sec. 227.26(2)(d) entitled "Temporary suspension of rules" provides: The committee may suspend any rule by a majority vote of a quorum of the committee. A rule may be suspended only on the basis of testimony in relation to that rule received at a public hearing and only for one or more of the reasons specified under s. 227.19 (4) (d).

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Thanks so much for your support.

Mike

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Richmond, Kyle

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Saturday, August 26, 2006 6:34 PM
To: Kasieta, Robert
Subject: Seb Meeting

Bob, do you have any time to meet before Wed's SEB meeting? I can come to your office or any other place at any time Sunday, Monday or Tuesday.

Thanks so, Mike

Richmond, Kyle

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Sunday, August 27, 2006 9:56 AM
To: Kasieta, Robert
Subject: RE: Seb Meeting

Thanks so much Bob. I will see you then.

I will send you some thoughts/ideas that I have come up with later today.

Thanks again.

Mike

-----Original Message-----

From: Robert J Kasieta [mailto:rjkasieta@kasieta.com]
Sent: Sunday, August 27, 2006 9:34 AM
To: 'Michael S. Maistelman'
Subject: RE: Seb Meeting

Mike,

I had an appointment for midmorning tomorrow cancel. Therefore, I've reserved time for us to meet at my office at 10:30 a.m. tomorrow (Monday) morning. Please let me know if that time will not work out for you for any reason. I look forward to seeing you, bjk

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Richmond, Kyle

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Tuesday, August 29, 2006 9:34 AM
To: Kasieta, Robert
Subject: RE: FW: Letter

I agree, let's do a phone conference tonight with Kerry and Carl. I will work on setting it up.

-----Original Message-----

From: Robert J Kasieta [mailto:rjkasieta@kasieta.com]
Sent: Tuesday, August 29, 2006 6:49 AM
To: msmlaw@execpc.com
Subject: RE: FW: Letter

This is very helpful. I am in depositions all day but am going to try to phone Carl again during breaks. I would also like to talk to Carrie before the meeting, if possible. Are you available to touch base this evening? I would like to work through the language of the motion before the meeting. Thanks, Mike, for taking time to work through the issue with me yesterday. bjk

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From: Michael S. Maistelman [mailto:msmlaw@execpc.com]
Sent: Monday, August 28, 2006 3:53 PM
To: rjkasieta@kasieta.com
Subject: Fwd: FW: Letter

Bob. Thanks for meeting today. Attached are the letters from the JCAR regarding the suspension of the Emergency Rule. As I suspected the JCAR failed to suspend the SEB rule pursuant to Wis. Stats. Sec. 227.26(2)(d) entitled "Temporary suspension of rules" provides: The committee may suspend any rule by a majority vote of a quorum of the committee. A rule may be suspended only on the basis of testimony in relation to that rule received at a public hearing and only for one or more of the reasons specified under s. 227.19 (4) (d).

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The JCAR motion failed to specify the statutory reasons under Wis. Sec. 227.19(4) to suspend

Kerry Dwyer - Please review 'Some ideas1'

From: "Michael S. Maistelman" <msmlaw@execpc.com>
To: "Carl Holborn" <carl.holborn@wilaw.com>, <kerry.dwyer@wilaw.com>
Date: 8/29/2006 9:31 AM
Subject: Please review 'Some ideas1'

These were some ideas I had drafted last week. Just something for you all to chew on. Bottom line is **we need to accomplish the following:**

1. **Bottom line - Green has a PAC limit like any other Gov candidate i.e. \$485,000. When Green transferred his 1.3 Million dollars in January 2005 the PAC money that he transferred into his State account should we counted towards that PAC limit.** That Green must divest himself of all PAC monies in excess of the PAC limit of \$485,000 and be fined \$18,754.50 for accepting \$182,545 in excess PAC money (\$500.00 fine plus 10% of the overage):
2. **Bottom line -Non-Registered PAC's - a finding that he wrongfully accepted monies from PAC's not registered in WI.** Nonetheless, the SEB will give him 7 days to get those non-registered PAC's registered in WI. If any non-registered PAC's do not get registered in the 7 days, Green will have to divest his campaign of those monies and will be fined accordingly. (\$500 multiplied by the number non-registered PAC's after 7 days)
3. A finding that Administrative Rules cannot be interpreted in such a manner as to conflict with WI Campaign Finance laws. That the Wisconsin Legislature by intentionally failing to in act the JCAR proposed legislation (to kill the emergency rule) in essence disagreed with the emergency rules suspension. That the JCAR failed to properly suspend the emergency rule since the reasons that it gave were not supported by he facts or law. A finding that Green spent all of his dirty money is without merit. You cannot violate WI Campaign finance laws (by having money in violation of the law) and then get rid of monies that you should not have had in the first place and argue that you cannot be fined since you already spent the money. Like my friend and former SEB Board member David Halbrooks said about this issue yesterday, " If you steal money and get caught you cannot tell the judge that you already spent the money and therefore do not have to give it back."

I have also been told that the Gov's Campaign and the Dem party and others will give you cover on this in the media – not like what happened on HAVA same day registration.

Even if this ends up in Court it is a PR victory for us since it makes Green spend money and have to defend the use of his Washington DC dirty money.

Thanks, Mike

 **Richmond, Kyle**

-SEB

From: Michael S. Maistelman [msmlaw@execpc.com]
Sent: Tuesday, August 29, 2006 11:56 AM
To: msmlaw@execpc.com
Subject: Open Meetings Issue/Walking Quorums etc
Importance: High

Given the attached, I think that only two SEB members can be part of the call tonight. I am permitted as a member of the public to communicate with SEB members and to send to SEB members info and correspondence but I want to make sure whatever we do it complies with the Open Meetings laws.

Please call me at the office 414.908.4254 or cell 414.333.9700 to decide who should be on the call and to insure compliance with the above.

Thanks