GODFREY & KAHN S.C.
ATTORNEYS AT LAW

May 2004 • Vol 1, Issue 1 • www.gklaw.com

Corporate Update

Abstract: During the 2004 election cycle, individuals and businesses are likely to be solicited by candidates, political parties and political action committees for contributions. Campaign finance laws are complex and compliance is rigorous. Employers and corporate executives should consider a number of legal guidelines when evaluating these contribution requests.

Political Contributions: Election Year Reminders for Wisconsin Employers

By Mike Wittenwyler

With the presidential primaries already behind us, the 2004 political season is well underway. During this time, individuals and businesses will be frequently solicited for contributions by various candidates, political parties and political action committees. While the laws affecting campaign finance are complex and compliance requires constant attention to detail, there are some general legal principles that every employer should keep in mind when evaluating these contribution requests.

Corporate contributions are generally prohibited.
Under both Wisconsin and federal law, corporate contributions to candidates, political parties and political action committees (PACs) are strictly prohibited. In fact, making illegal corporate contributions can be a felony. While some states allow corporate contributions, Wisconsin does not. Instead, only individuals and registered political committees can contribute to the campaigns of Wisconsin and federal candidates and political parties. Corporations, however, may establish and sponsor a PAC that is funded with individual contributions and, in turn, makes contributions to candidates, political parties and other PACs.

While corporate contributions to candidates, political parties and PACs are prohibited, corporations may contribute to certain independent political organizations engaged in lobbying and public advocacy activities such as section 501(c)(4) advocacy groups, section 501(c)(6) business organizations and section 527 political organizations. If they accept corporate contributions, however, these organizations *cannot* make contributions to Wisconsin or federal candidates or engage in other regulated campaign finance activities, such as expressly advocating a candidate's election or defeat.

Contributions include more than monetary contributions.
As defined under state and federal law, a "contribution" also includes any good, service or property provided to a candidate, political party or PAC at no charge or at less than the usual fair market value. Typical "in-kind" contributions include food or beverages available at a fundraising event, printing costs or postage. Similarly, when an individual is paid to work on behalf of a candidate, the payment for those services is considered an in-kind contribution. Accordingly, the prohibition on corporate contributions to candidates, political parties and PACs applies to in-kind as well as monetary contributions.

Individuals may *not* be reimbursed for political contributions.
Individuals who make contributions to candidates, political parties or PACs may *not* be reimbursed by a third party—including a corporation—for the amount of a contribution, in whole or in part. In addition to the absolute prohibition on corporate contributions, contributions may not be made in the name of another entity, and it is unlawful to hide or not disclose the true identity of any contributor.

Continued on next page

Political Contributions: Election Year Reminders for Wisconsin Employers (continued)

Political contributions must be voluntary, without employer coercion.
Individual political contributions must be voluntary. While employers may take certain steps to encourage increased political involvement, they cannot require political contributions as a condition of employment or coerce employees through threats of job discrimination or financial reprisals. Any person soliciting employees for contributions to federal candidates, political parties or PACs must inform the employee of their right to refuse to contribute at the time of solicitation.

Contribution amounts are regulated and limited.
Individual contributions to candidates, political parties and PACs are regulated and limited—by the state for state candidates and committees and by the federal government for federal candidates and committees. These two regulatory systems (state and federal) are separate and distinct, with specific contribution limits based on the exact recipient of the contribution. There is also a $10,000 aggregate limit on *all* of the political contributions made by any one individual to all state candidates, political parties, and PACs in a calendar year, regardless of the contribution's recipient. Also, *all* of the contributions made by an individual to influence federal elections may not exceed $95,000 during a two-year election cycle.

For more information about campaign finance issues in the workplace or details about Godfrey & Kahn's Political Law Practice Group, contact Mike Wittenwyler at 608-284-2616 or wittenwyler@gklaw.com.◆

IRS Amends Tax Shelter Regulations for Private Confidentiality Agreements

By Jennifer Hanneman

Last year the Internal Revenue Service (IRS) issued final regulations requiring taxpayers to disclose certain transactions as tax shelters. The regulations identified six categories of "reportable transactions." Tax-motivated transactions offered to taxpayers under conditions of confidentiality are one type of transaction targeted by the IRS. Since their enactment, these regulations have been subject to an overly broad application to confidential transactions. Consequently, the IRS recently amended the regulations to scale back the circumstances under which a confidential transaction must be disclosed.

Unfortunately, under last year's final regulations, many standard non-disclosure or confidentiality provisions or agreements ran the risk of creating a reportable transaction even where there was no tax avoidance purpose. For example, a letter of intent to acquire a business containing a standard non-disclosure provision was considered a tax shelter unless it provided a specific exception that allowed disclosure of the transaction's tax treatment. Since the regulations were issued, such agreements often have included language expressly authorizing disclosure of the tax treatment and tax structure of the transactions to ensure the transaction was not reportable under the tax shelter regulations.

In response to concerns raised by the overly broad application of the regulations to confidential transactions, the IRS recently amended them. Under the new regulations, a confidential transaction is only reportable if:

1. An adviser limits a taxpayer's ability to disclose the tax treatment or tax structure of a transaction in order to protect the confidentiality of the adviser's strategy; and

2. The taxpayer has paid an adviser a minimum fee ($250,000 for corporate taxpayers or $50,000 for other taxpayers).

Since the limitation on the ability to disclose must now be imposed by an adviser, most standard confidentiality agreements entered into between parties involved in a transaction will no longer be considered reportable transactions.

If you have any questions regarding the application of the tax shelter regulations, contact Jennifer Hanneman (jhanneman@gklaw.com) at 262-951-7113 or another member of the Tax team.