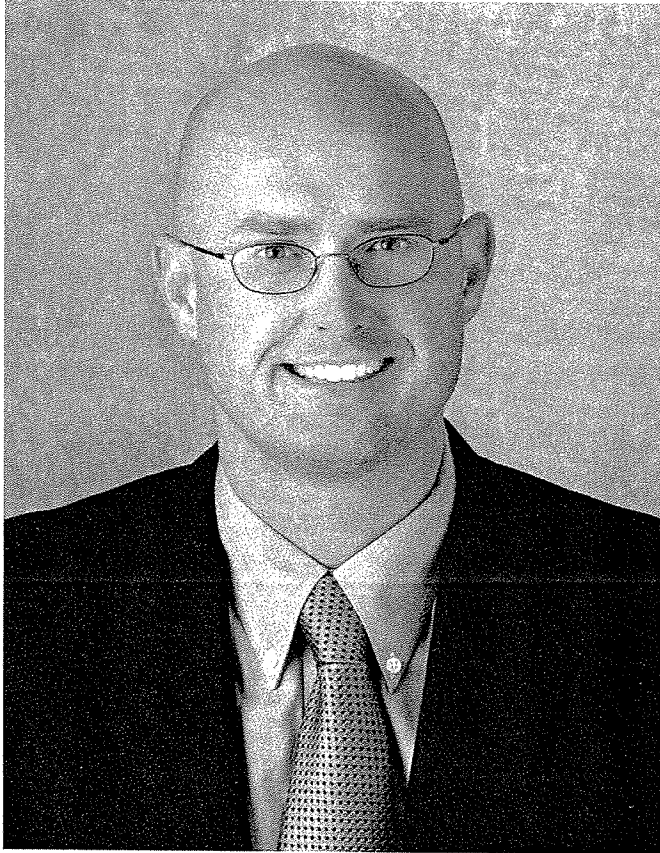


COORDINATION:

WHEN LEGAL INDEPENDENT POLITICAL ACTIVITIES BECOME ILLEGAL CONDUCT



BY MIKE WITTENWYLER, LEAD ATTORNEY,
POLITICAL LAW GROUP, GODFREY & KAHN

No area of political law today is more controversial — or more uncertain — than “coordination.” Generally, the term refers to contact between a candidate or candidate’s agent and another organization. Impermissible coordination can, in an instant, turn legal activity under Wisconsin and federal campaign finance law into illegal conduct. However, the legal distinctions between coordinated political activity and uncoordinated political activity are not always clear.

WISCONSIN STANDARD

Coordination is an evolving area of the law and any opinion about coordinated expenditures is principally conjectural because

of the limited precedent. While each situation has to be evaluated on its own facts and circumstances, there are some general rules. Coordination under Wisconsin law is likely to occur when:

- A communication or activity takes place at the request or suggestion of the candidate or agents of the candidate; or
- In the absence of a direct request or suggestion from the candidate, the cooperation, consultation or coordination is such that the candidate or his agents can exercise control or influence over the organization’s communication or activity; or
- Where there has been substantial discussion or negotiation between the candidate and the organization over a communication’s: (1) content; (2) timing; (3) location, mode, or intended audience (such as a newspaper or radio advertisement); or (4) “volume” (for example, the number of copies of printed materials or frequency of media spots); and that substantial discussion or negotiation is such that the candidate and the organization emerge as partners or joint venturers in the expenditure. The candidate and organization need not be equal partners.

An organization engaged in independent political activities (independent expenditures, issue advocacy communications and nonpartisan grassroots election activities) must avoid significant, extended or substantial discussions with a candidate or his agents about the organization’s activities as well as any discussions that demonstrate control or even influence by the candidate. If such discussions occur or the candidate exercises real or apparent control or influence over the organization’s activities, the activities would appear to augment or replace activities otherwise done by a candidate, creating an impermissible in-kind contribution.

An organization that finances or sponsors coordinated activity is deemed to have made an in-kind contribution to the candidate with whom it coordinated in the amount of the

expenditure. In-kind contributions are treated the same as monetary contributions and are subject to contribution limits and source restrictions. And a corporation may not contribute to Wisconsin candidates, except through its affiliated PAC.

PERMISSIBLE CONTACT

The best practice for any organization to adopt with respect to a candidate or an agent of a candidate, of course, is not to have any contact with a candidate or his or her agent. That is, an allegation of coordination cannot be made, legitimately, if an organization engaged in independent political activities never communicates with a candidate or candidate's agent. An absolute "no contact" rule, however, may be impractical and may adversely affect the organization's other political activities and relationships with candidates. Moreover, an unduly rigid rule would require an organization to compromise its First Amendment rights to comment on public issues and lobby government.

While independent political activities cannot be coordinated in any way with a candidate or agents of the candidate, an organization can still communicate with a candidate or the candidate's agents on other matters. Within the principles set forth above, an organization and its members still may:

- Continue to lobby candidates, including incumbent public officials, and work with candidates on public policy issues;
- Hold events attended by candidates;
- Request otherwise publicly available materials from a candidate and conduct research activities about a candidate;
- Interview candidates, endorse candidates, and engage in member communications about that endorsement;
- Make PAC or personal contributions to a candidate's campaign or political party committee;
- Coordinate its independent political activities with the independent activities of other organizations, including PACs; and,
- Publicly disclose its plans to engage in independent political activities as well as summaries of past activities.

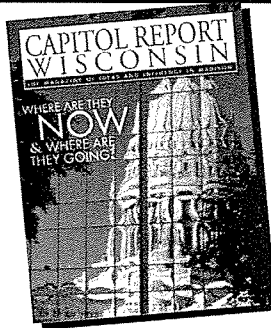
With any of these examples, an organization must continue to avoid discussions with a candidate about the organization's independent political activities as well as any discussion that demonstrates control or influence by the candidate. If such discussions

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police officers.

Bornstein's three-plus years of service to Kohl are reflected in his affection toward the senator. "Love him. Great guy," Bornstein said of Kohl.

Bornstein also helped obtain federal funding for Milwaukee's Riverwalk and train station, redevelopment of the Menomonee River Valley, and the police communication building in Milwaukee, which included emergency response communication.

A project he notes as "particularly gratifying" was working on BadgerCare, providing medical care for people transitioning off welfare. Under the Wisconsin welfare reform program, people leaving welfare lost their Medicaid eligibility.

"Well, that's a disincentive," said Bornstein. "And it was a lot of work trying to get the Clinton administration to agree to take waivers that we needed to do that, and that was something I did on behalf of the city of Milwaukee."

While working for Aspin, Bornstein got involved with former Gov. Tommy Thompson and Thompson's Secretary of Administration Jim Klausner in negotiating with Chrysler to provide assistance to workers and the community when its Kenosha assembly plant closed. "We needed state troopers to get us out of the building," Bornstein recalled. "There was a lot of unhappiness. The workers in Chrysler in Kenosha had wanted to keep the [assembly] plant open. They were upset that we could not convince Chrysler to keep the plant open. They were throwing things at us."

But one of the great successes of Bornstein's team was to at least keep the Chrysler engine plant open in Kenosha and retain its employees.

Despite his achievements, Bornstein's dedication to his work does not detract from time with his family. He beams when he talks about his two daughters, who are 20 and 18 years old, whose photos are proudly displayed on his desk. The recently engaged lobbyist talks hopefully of someday visiting Israel with his fiancée. He remains close to his attorney brother, Peter, who is six years older and lives in Colorado.

"I wouldn't be surprised by anything he does," Peter boasts of his brother's success. "I had no influence on him whatsoever. His choices and what he's doing with politics and lobbying and the law firm and what he did before are his own choices."

On his wall, a signed photo from Aspin summarizes Bornstein's laid-back approach to his demanding work: "To Ted, That's life in the big city. Les." ♦

LEGAL

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occur or the candidate exercises real or apparent control or influence over the organization's activities, the independent political activities would appear to augment or replace activities otherwise done by the candidate. The organization's independent activities, that is, cannot allow the candidate to avoid a cost or provide something of value to the candidate — what would otherwise be an in-kind contribution and possibly a prohibited contribution under state law.

CONCLUSION

In sum, a sponsor of independent political activities must take careful steps to

avoid engaging in activities that could be viewed as illegal coordination. However, while caution and care are always warranted, it need not and should not lead to political paralysis. ♦

Footnote: This article only addresses Wisconsin law on coordination. Political professionals should also be aware of the federal laws on coordination that apply to involvement in federal election activity and the Federal Election Commission's plans to adopt an updated coordination standard in spring 2006. For more information, visit www.fec.gov/law/law_rulemakings.shtml#coordinated.

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Street (608-255-4861, www.madisonclub.org). In order to hold a meeting at the Madison Club, an individual in the group or business must be a member of the club. The Madison Club has 16 private meeting rooms, which can be set up for any type of meeting. Superb catering services, technology support, and equipment rental are all available on site.

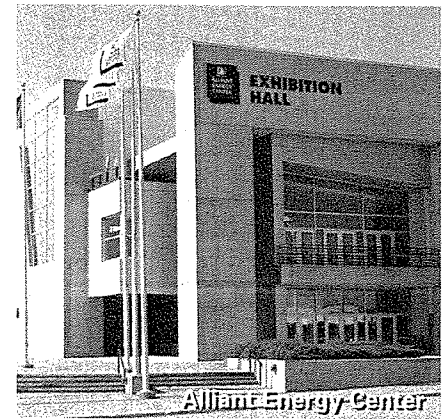
A LITTLE FARTHER AWAY

Two other gems are not far from Capitol Square. About six blocks west on the bustling UW-Madison campus, the Fluno Center for Executive Education is truly a world-class place to do business (601 University Avenue, 608-441-7117, uwexced.com/fluno). Although it's part of the UW Business School, the Fluno Center is available to the private sector for meetings related to education.

Meeting rooms operate with the latest presentation-delivery technology. A 3,200-square-foot auditorium is on the first floor. Most of the meeting rooms, ranging from small breakout rooms about 250 square feet in size to larger, classroom-size spaces, are on the second floor; there are a few meeting spaces on the top floor.

Although the Fluno Center provides everything business guests would need, including accommodations, dining and entertainment, UW-Madison and State Street are a convenient change of scenery and both within walking distance.

A few miles south of downtown Madison is the Alliant Energy Center (1919 Alliant Energy Center Way, 608-267-3991, www.alliantenergycenter.com), which hosts



many local, state and regional meetings in the Conference Center in Exhibition Hall.

"We provide flexible and functional space with exceptional technological capabilities, whether it's for a group of 10 executives or a big association with hundreds in attendance," said Ted Ballweg, marketing manager for Alliant Energy Center.

Another plus is the easy access to the Alliant Energy Center from the interstate via the Beltline Highway. There's an attached hotel and another nearby, and Madison's downtown entertainment district is only a short drive or cab ride away.

So for your next meeting in Madison, relax and enjoy the convenience. ♦

