

A separate, segregated fund may not agree with prospective contributors that their contributions will be given to the party or candidate of their choice. (Issued to M. Scott Cisney, February 18, 1976)

You have requested that the Board clarify its position as set forth in Op. El.Bd. #75-3 regarding the "earmarking" of contributions. Specifically, you ask the Board to opine that contributors to a separate, segregated fund established pursuant to sec. 11.38 (1)(a) 2., Stats., may designate the political party or candidate that will be the ultimate recipient of their contributions.

In your letter of September 16, 1975 requesting what has been issued as Op. El.Bd. #75-3 you indicated that your client, a corporation, intends to establish a fund and that "(e)xpenditures in the form of contributions for political parties and candidates would be made from the contents of this fund, the candidates and parties receiving same to be made in accordance with the instructions of the contributor and, if not so earmarked, to be determined by a committee of employees."

It is the Board's opinion that sec. 11.16 (4), Stats., as amended by Ch. 93, sec. 64, Laws of 1975 which provides in part "(w)hen a contribution is made to a political party or to an individual or committee other than a candidate or his personal campaign committee, the purpose may not be specified" prohibits such designation by contributors to a separate, segregated fund unless such fund acts only as a conduit between the contributors to that fund and the recipients of contributions. If the designations under the circumstances you discuss in a nonconduit circumstance were permitted and were respected by the fund, the ultimate recipient would not be aware of the identity of the contributor and could not report such information. This would constitute "laundering" under sec. 11.30 (1), Stats. However, if the fund acts only as a conduit, and transmits the contributor's contribution to the recipient together with information regarding the identity of the contributor, the recipient is able to comply with the reporting requirements regarding the identity of contributors and no "laundering" occurs. The sponsoring corporation may set up a "fund" for this purpose which need not register or report pursuant to Ch. 11, Stats. However, such a "fund" may not exercise any discretion regarding the recipients of the contributions. The sponsoring corporation may set up two separate entities, one to act as a conduit which need not register and report pursuant to ch. 11, Stats., and the other to function as a fund established under sec. 11.38 (1)(a) 2., Stats., which must register and report.