

Co-signing a commercial loan: The guaranty of a commercial loan to a registrant becomes a personal loan and contribution from the guarantor only when the registrant defaults; the loan-contribution is then pro-rated among the various guarantors. Sec. 11.01 (5), Stats. (Issued to Scott Herrick, July 1, 1977)

You have asked whether the co-signing of a commercial loan for a personal campaign committee constitutes a "contribution" within the meaning of the campaign finance laws. For purposes of this opinion, the co-signing of a commercial loan will be treated as the execution of a contract of absolute guaranty between the lending institution and the guarantor.

For the reasons expressed below, the Board has concluded that the legislature did not intend the term "contribution" as used in the campaign finance laws, to include contracts of guaranty at the point of execution.

"Contribution" is defined in sec. 11.01 (5), Stats. The only subsections of that definition which could arguably encompass a guaranty at the point of execution reads:

"(5) "Contribution" means -

(a) A gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or state bank made by the bank in accordance with applicable banking laws and regulations in the ordinary course of business), made for political purposes. In this paragraph "anything of value" means a thing of merchantable value.

(c) A contract, promise, or agreement, if legally enforceable, to make a disbursement for any purpose under par. (a)."

The "enforceable agreement" in sub. (c) above refers to an agreement creating an absolute obligation on the part of the contributor. The execution of a guaranty creates only a conditional obligation, which does not arise unless and until the candidate defaults. Further, a guaranty does not fall within the categories of "gift, subscription, loan, advance or deposit of money or anything of value..." set out in sub. (a) above, as those terms are commonly used in the law.

Finally, the Board notes that the legislature has directed that the campaign finance laws shall be "construed to impose the least possible restraint on persons...whose activities do not directly affect the electoral process," consistent with the purposes of the act. Sec. 11.001 (2), Stats. The purposes served by a construction of the term "contribution" to include co-signing a loan would be served much less restrictively by the position that guaranties do not become contributions until the principal defaults and the guarantor actually becomes liable for the debt.

Therefore, the guaranty of a commercial loan to a personal campaign committee does not become a contribution unless and until the committee defaults. In that case, the contribution will be pro-rated among the guarantors.

For an explanation of reporting these contributions, see the draft of the proposed administrative rule, appearing below. (It should be noted that the proposed rule is not yet a part of the administrative code. It is still subject to the due process safeguards of notice and hearing provided in chapter 227, Stats., for promulgation of administrative rules.)

E.Bd. 1.31 Treatment of commercial loan guaranties. (1)
Definitions. As used in this rule:

(a) "Registrant" means any committee, group, individual or candidate who or which is required to register with a filing officer pursuant to sec. 11.05, Wis. Stats.

(b) "Commercial loan" means a loan of money by a national or state bank made in accordance with applicable banking laws and regulations in ordinary course of business.

(2) Treatment of guaranty on defaulted loan.

(a) In the event that any registrant defaults on a commercial loan, the unpaid balance shall be apportioned among the guarantors as loans from each guarantor, in that proportion of the unpaid balance which each guarantor bears to the total number of guarantors. Each such loan shall be reported by the registrant as a contribution and as an incurred obligation of the registrant to the guarantor. In reporting such an incurred obligation, the registrant shall specify that the obligation arose out of the guaranty of a commercial loan, and shall describe the commercial loan by listing the name of the commercial lender and the date on which the loan was made.

(b) If the registrant reduces the unpaid balance by payment to the commercial lender or reimburses a guarantor from whom the commercial lender has collected on a guaranty contract, the amount of each guarantor's loan shall be reduced in that proportion of the payment or reimbursement which each guarantor bears to the total number of guarantors. A reduction in the amount of the loan from a guarantor should be reported as a corresponding reduction in the amount of the guarantor's contribution and in the amount of the registrant's incurred obligation to the guarantor.

(3) In addition to the above, in the event the registrant defaults, the guarantor becomes independently subject to registration and reporting requirements on the basis of his incurred obligation to the commercial lender, pursuant to sec. 11.01 (11), Stats.

(4) Nothing in this rule applies to loans secured by individuals or candidates for non-political purposes.