CONSTITUTIONALITY OF SEC. 11.26 (9)

A more difficult question is posed by your inquiry regarding the constitutionality of sec. 11.26 (9), Stats., which provides:

> "(9) No candidate may receive more than 65% of the value of his total authorized disbursement limitation under s. 11.31 from all other committees subject to a filing requirement, including political party committees."

Unlike sec. 11.26 (1) (d) and (2), this section is not, strictly speaking, a contribution limit. Rather it has aspects of a contribution limit, an expenditure limit, and a source restriction. In my prior opinion I stated that I believed that this provision of the law was now a nullity since it was dependent upon the invalid disbursement limitations. In light of the discussion above I now withdraw that opinion. However, several new constitutional questions not considered in that opinion are raised if sec. 11.26 (9) is valid.

The court in *Buckley* approved the concept of limits on contributions by individuals and committees. In effect, sec. 11.26 (9) does not operate to impose a maximum dollar amount on each committee's support of a particular candidate. Rather, it totally prohibits contributions by committees to candidates who have reached the committee financing limit. Thus, it is more restrictive than the contribution limits approved by the court in *Buckley*. The provision also has aspects of a disbursement limitation on the candidate, in that it disallows an entire category of contributions to him once he has reached a certain dollar amount of receipts from that group. Expenditure limits were expressly disapproved by the court in *Buckley*.

On the other hand, the government interests manifested in the enactment of the 65 percent committee contribution limit appear to be strong. Presumably the legislature felt a need to encourage candidacies based on broad popular support, rather than on the backing of special interest groups and political parties. The governmental interest in promoting disclosure in the political process is also indirectly served, since any candidate who spends more than 65 percent of his disbursement limitation will have to record some individual contributions. These will provide more particularized information about a candidate's source of support.

There is no federal counterpart to the 65 percent limit, and the *Buckley* case itself does not resolve the question of validity. There is, of course, a strong presumption that a regularly enacted statute is valid and constitutional. *In re City of Beloit* (1968), 37 Wis. 2d 637, 155 N.W. 2d 633. In the absence of convincing evidence of invalidity, I must conclude that the statute is probably constitutional.

In summary, although the constitutionality of the 65 percent limit is, in my opinion, somewhat doubtful the board should continue to enforce it. I hereby withdraw that portion of my opinion to you of August 16, 1976, that advised you to consider sec. 11.26 (9) as a nullity. Other contribution limits are probably valid and enforceable although substantial doubt exists because of their reliance or expenditure limitations which are now void.

BCL:DH

Anti-Secrecy; Open Meeting; Municipalities; Public Utilities; A municipal public utility commission managing a city owned public electric utility is a governmental body under sec. 19.82 (1), Stats., and its meetings are subject to secs. 19.81-19.98, Stats. OAG 83-76

October 28, 1976.

LEO W. MACK, *District Attorney*
Winnebago County

You state that the City of Menasha owns an electric generating plant which operates as an electric public utility. By reason of charter ordinance, approved by the electorate, management and control has been delegated to a five-person commission as permitted by sec. 66.068, Stats.

You request my opinion on the following questions:

1. Is the commission a governmental body within the meaning of sec. 19.82 (1), Stats., as created by ch. 426, Laws of 1975?

It is my opinion that it is.

2. Do the provisions of secs. 19.81-19.98, Stats., as created by ch. 426, Laws of 1975, apply to the municipal electric utility commission when it conducts utility business meetings?

It is my opinion that they do.

Section 19.82 (1), Stats., as created by ch. 426, Laws of 1975, provides:

> " '*Governmental body' means a* state or *local* agency, board, *commission*, committee, council, department or public body corporate and politic *created by* constitution, *statute, ordinance*, rule or order; a governmental or quasi-governmental corporation; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of ch. 111." (Emphasis added.)

The utility commission you refer to meets the express terms of the statutory definition.

Section 66.068 (1), (2), (3) and (7), Stats., provides in material part:

> *'Management.* (1) In cities owning a public utility, the council shall ... provide for a nonpartisan management thereof, and create for each or all such utilities, a board of 3 or 5 or 7 commissioners, to take entire charge and management of such utility, to appoint a manager and fix his compensation, and to supervise the operation of the utility *under the general control and supervision of the ... council.*
>
> "(2) The commissioners shall be elected by the board or council for a term ....
>
> "(3) The commissioners shall choose from among their number a president and a secretary. They may command the services of the city engineer and may employ and fix the compensation of such subordinates as shall be necessary. *They may make rules for their own proceedings and for the government of their department. They shall keep books of account,* in the manner and form prescribed by the public service commission, *which shall be open to the public.*
>
> "***
>
> "(7) In cities of the second, third or fourth class the *council may provide for the operation of a public utility* or utilities *by the board of public works or by another officer or officers,* in lieu of the commission above provided for." (Emphasis added.)

A municipal utility commission is not a body corporate separate from the city. It is an agency or department of city government which has power to carry out a proprietary function. *Flottum v. Cumberland* (1940), 234 Wis. 654, 664, 291 N.W. 777, holds that a municipal utility commission is a city commission.

In *Richmond v. Lodi* (1938), 227 Wis. 23, 25, 277 N.W. 620, it was stated:

> "... The management, as between itself and the village, sustains a relation described as governmental, even though in the relations of the utility with others, its character is proprietary. ..."

Section 66.068 (3), Stats., provides that the books of account shall be open to the public, and secs. 19.81-19.98, Stats., require that the meetings of the utility shall be open to the public except in those cases set forth in the exemptions in sec. 19.85, Stats. Whereas sec. 66.068 (3), Stats., permits the commission to make rules for its own proceedings, such rules cannot be in conflict with the provisions of secs. 19.81-19.98, Stats.

BCL:RJV

Attorneys; Sheriffs; Public Officials; County Board; District Attorney; Corporation Counsel; County board has no power to authorize sheriff to employ a police legal advisor to give day-to-day advice to the sheriff unless such person is an assistant district attorney or assistant county corporation counsel. OAG 85-76

October 29, 1976.

WILLIAM L. SEYMOUR, *Corporation Counsel*
Walworth County

You inquire whether, in a county having a district attorney and county corporation counsel, the county board may authorize the sheriff to employ an attorney as a police legal advisor in his department "as liaison with the District Attorney's Office and the Courts, for case preparation prior to submission to the District Attorney's Office, for interpretation of laws and court decisions,