

In the Matter of )

) **PRELIMINARY FINDINGS OF  
) FACT AND CONCLUSIONS**

**American Legislative Exchange )**

**Council and Time Warner Cable )**

) GAB Case #2012-08

**Background.** On March 23, 2012, the Government Accountability Board received a complaint from The Center for Media and Democracy against the American Legislative Exchange Council (“ALEC”) and 43 Republican legislators alleging violations of §19.45 and §13.625, Wis. Stats. The Center for Media and Democracy filed a supplement to its complaint on April 11, 2012. The complaint centered on the reimbursement and/or payment of travel expenses to legislators for attendance at ALEC conferences. The complaint also alleged that legislators accepted free tickets to a baseball game and party from Time Warner Cable, a Wisconsin lobbying principal and member of ALEC. Finally, the complaint alleged that a number of legislators failed to report the receipt of expense payments by ALEC on their Statements of Economic Interests.

**Findings of Fact.**

Attendance at ALEC conferences

The Ethics Code, §19.45 (3m), Wis. Stats., generally prohibits state public officials from accepting, food, drink, travel or lodging from anyone unless a specific exception applies. However, §19.56 (3) (c) permits an official to accept payment or reimbursement of actual and reasonable costs for such items if the official can show by clear and convincing evidence that the costs were incurred or items received on behalf of, and primarily for the benefit of, the State. Guideline 1222, adopted by the Board, further provides that the payment of costs should be provided, arranged, or sanctioned by an event’s organizer. The Board has also advised that an official may attend meals and hospitality suites hosted or sanctioned by the event organizer, but not events held in conjunction with a conference but not officially a part of it.

In a staff opinion issued to ALEC on June 30, 2010, and affirmed by the Board on October 15, 2010, the Board said:

The fact that lobbying organizations may make donations to ALEC or that lobbyists may assist in ALEC’s fundraising does not bring the lobbying law into play as long as these organizations and individuals neither earmark any monies nor help to decide which Wisconsin legislators receive a scholarship. As I understand it, only ALEC staff makes scholarship award decisions.

Legislators may accept actual and reasonable expenses of travel as well as conference fees. If reimbursement is provided directly to a legislator, he or she must report that to the Board.

In response to a letter of August 20, 2012 which was a part of the Board materials at its last meeting, the Board received a letter from ALEC’s attorney. ALEC’s response

indicates that ALEC has, for the most part, been following the Board's advice and that ALEC contributors do not choose which legislators will attend conferences.

It does appear that on November 3, 2010, ALEC provided the ALEC Public Chairs in Wisconsin, Senator Scott Fitzgerald and then-Representative Michael Huebsch, with the names of specific donors to the scholarship fund for Wisconsin. In his November 12, 2010 Memorandum to ALEC, ALEC's attorney advised ALEC not to provide this information to legislators and ALEC's attorney has stated that ALEC has said it is following his recommended procedures.

At no time did the Board advise ALEC not to disclose contributors, although that appears to be a good practice. The question arises whether the fact that contributors to ALEC may designate contributions to be used for Wisconsin legislators was improper. This practice does not violate any statutory provision or the Board's advice against earmarking for specific individuals as long as the contributors are not involved in the selection of legislators or the determination as to the amount of reimbursement each legislator will receive.

#### Baseball game

As indicated above, legislators are permitted to accept food and drinks at dinners and hospitality suites that are a scheduled part of a conference. It does not matter who may underwrite the dinner or hospitality suite, as long as the conference sponsor has arranged or sanctioned the event. On the other hand, the Board has generally advised legislators against attending events like concerts or golf outings, even if sanctioned, because the State would never reimburse for such activities and it would be harder to demonstrate that attendance was primarily for the benefit of the State and not for private benefit.

According to ALEC, the baseball game event was the scheduled dinner event for that day of the ALEC conference. So it appears to fall in between an official dinner and an entertainment event. The Board has asked legislators who attended the event to reimburse ALEC \$25 for the cost of baseball tickets because attendance at a baseball game is primarily of private benefit and not a benefit to the State. This appears to have been the cost of attendance minus the value of food and drink that was put at \$50. All legislators who attended the event have done so.

#### Statements of Economic Interests

In the past, the Board's staff advised the Chief Clerks that legislators who received direct reimbursement from a conference sponsor must report that on the individual's Statement of Economic Interests. We also advised the Chief Clerks that if a legislator paid expenses from the legislator's office account, and a conference sponsor reimbursed the State directly, there was no need to report anything. The reasoning was that the State is paying the expenses and the State is receiving reimbursement. In addition, it would all be a matter of public record.

The Board has obtained from ALEC the names of all legislators who were directly reimbursed. The Board determined that a number of legislators failed to include the receipt of expenses from ALEC on their Statements of Economic interest, although a

number reported the expense receipt by letter and other treated it as a campaign expense reimbursement. There is no evidence that the failure to report was done intentionally.

### Conclusion

There is no probable cause to believe that ALEC violated the Ethics Code or lobbying law in connection with reimbursing the expenses of legislators who attended the 2010, 2011, or 2012 ALEC conferences.

There is no probable cause to believe that any legislators violated the Ethics Code or lobbying law in connection with accepting reimbursement for the expenses of attending the 2010, 2011, or 2012 ALEC conferences.

Legislators should, and have, paid ALEC for the cost of the baseball game which was the venue for a conference dinner and no further action is warranted.

Legislators should have reported receipts from ALEC to the Government Accountability Board on their Statements of Economic Interests, by separate letter to the Board, or as campaign expense reimbursement. All legislators have addressed this.

Adopted by the six members of the Board at its meeting of March 20-21, 2013.

STATE OF WISCONSIN  
GOVERNMENT ACCOUNTABILITY BOARD