

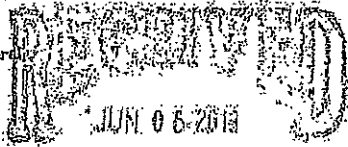


STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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May 31, 2013

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Office of District Attorney
Milwaukee, WI 53233

Mr. John T. Chisholm
District Attorney, Milwaukee County
821 West State Street, Room 405
Milwaukee, WI 53233

RE: Request for Assistance Relating To Campaign Finance Investigation

Dear District Attorney Chisholm:

Earlier this year, we met with you at your request to discuss the developments in a John Doe investigation relating to potential campaign finance violations involving campaign coordination (and thus the possibility that at least one non-candidate committee and possibly Friends of Scott Walker filed false reports with the Government Accountability Board). Deputy District Attorney Kent Lovern, Deputy Attorney General Kevin St. John, and DCI Administrator David Matthews also attended that meeting. You were concerned that the investigation was leading to subjects outside of your office's prosecutorial jurisdiction, and thus were seeking the assistance of the Department of Justice.

For the following reasons, we decline assistance at this time.

First, I am concerned about potential conflicts of interests that arise by virtue of our ongoing representation of Scott Walker in his official capacity as Governor. I have previously stated the basis of my concern in a December 3, 2010 correspondence relating to a prior investigation, and those concerns do not need to be repeated in detail here. While it is not clear that this investigation will indicate that Governor Walker has violated any Wisconsin laws, it is reasonably foreseeable that this may be a subject of the investigation. When lawyers have conflicts, client confidence that the lawyer is acting in their interest can erode and clients will be less willing to share information that is essential to providing sound legal advice.

Second, even in the absence of a true conflict by virtue of my representation of Governor Walker in his official capacity, I am concerned about the perception that my office can not act impartially, thus undermining public confidence in the investigation as a whole, particularly if the investigation does not result in an enforcement action. These perceptions may arise because of the general governmental relationship between the Administration and the Department of

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Justice or because of my personal relationship with the Governor.

I know that you appreciate this concern. In the past, you have requested my office review criminal complaints that were related to actions by the Milwaukee County Executive in his personal capacity and criminal complaints involving the conduct of a former state representative with whom you were personally acquainted.

Third, beyond my relationship with the governor, this investigation is likely to involve subjects who are politically involved on the conservative side of the political spectrum. At this point, I do not know all of the potential witnesses and subjects (and these will only be known with further investigation), but suffice it to say, this is a campaign finance investigation and there are a finite number of conservative-minded political activists, campaign operatives, and major donors in Wisconsin. Therefore, it is reasonable to foresee that if this investigation develops further, it could involve additional individuals with whom I or my campaign have had significant personal or business relationships. This may exacerbate any public perception that my office's involvement in an investigation would be biased.

To be sure, the statutory responsibilities of my office, which include both the legal representation of government officials and the enforcement of certain laws against all individuals and entities (including government officials), by their nature, create the potential for conflicts. In certain cases, the rules of professional conduct might not be strictly applied in order to accommodate statutory commands. See, e.g., SCR Chapter 20, Preamble [18]. In some cases, conflict screens might be established to minimize the potential for conflict.

This is not a matter, however, where such devices should be employed, even if they could be employed effectively. This is because there is no necessity, at this time, for my office's involvement because there are other state officials who have equal or greater jurisdictional authority without the potential disabilities I have mentioned. The Government Accountability Board has statewide jurisdiction to investigate campaign finance violations, which may be civil or criminal in nature. Thus, there is no jurisdictional necessity to involve my office. Should the Government Accountability Board, after investigation, believe these matters are appropriate for civil enforcement, they have the statutory authority to proceed. Should the Government Accountability Board determine, after investigation, that criminal enforcement is appropriate, they may refer the matter to the appropriate district attorney. Only if that district attorney and a second district attorney declines to prosecute would my office have prosecutorial authority. See generally Wis. Stat. § 5.05(2m).

In many respects, the Government Accountability Board as a lead investigator and first decisionmaker is preferable in this specific context. First, the potential violations involve statutes that the Government Accountability Board administers. The specific area of campaign finance law that may be applicable in this case, coordination, is not a model of statutory precision or consistency. Compare Wis. Stat. § 11.06(7)(a) (specifying nature of oath of independent expenditures to include no "cooperation or consultation" with the supported candidate) with Wis. Stat. § 11.06(4)(a),(d) (requiring a candidate "control" or "direct" a contribution to be reportable). The Government Accountability Board's prior involvement administering and advising on these statutes increases the likelihood that they will be applied in

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this case in a manner consistent with prior interpretations. Second, this experience will better inform the discretionary determination of whether or not the civil or criminal enforcement is appropriate. Third, as a non-partisan entity, the Government Accountability Board's investigation may inspire more public confidence than an investigation led by partisan-elected officials.

This approach has precedent. Previously, my office made an initial inquiry into the actions of a high ranking Wisconsin government official relating to a potential violation of laws that the Government Accountability Board administers and enforces. The information was shared with the Government Accountability Board and we determined it was appropriate for the Government Accountability Board to conduct further inquiry while my office stepped back due to considerations similar to those expressed in this letter.

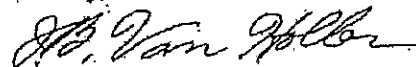
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The decision to decline to be involved at this time is based upon the specific facts and circumstances that have been presented to me. Unlike many circumstances involving investigation of potential criminal activity that transcends multiple jurisdictions, here there is a capable agency with equal statewide jurisdiction, meaning that my decision to decline participation will not undermine the state's ability to enforce the law. Moreover, there is no indication that there is a public safety threat, or that there are ongoing violations of the public trust - factors that could argue for force multiplication. In summary, there is no necessity for the Department to exercise a discretionary authority where the exercise of that authority could also disable the Department's ability to fulfill its other duties and responsibilities.

Moreover, this decision is made recognizing that conflict and impartiality issues are stressed within the context of the dynamic nature of a campaign financing investigation that could foreseeably involve individuals with whom I have relationships - individuals whose involvement may very well depend on the discretionary decisionmaking of investigators. Should the investigation develop into a more concrete form and potentially require the Department of Justice exercise of a different duty or power, we will revisit the appropriateness of our involvement - as occurred when the 2010 Milwaukee County probe led to particular criminal prosecutions that my office supported in the appellate courts.

Please contact me with any questions concerning this matter or if further explanation is required.

Sincerely,



J.B. Van Hollen
Attorney General

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Co: Kent Lovern, Deputy District Attorney
Kevin St. John, Deputy Attorney General
David Matthews, DCI Administrator