
2001 Wis Eth Bd 02
GIFTS, IMPROPER USE OF OFFICE, LOBBYING

The Ethics Board advises:

For state and local government officials

Neither a state public official nor a local public official should accept or purchase a ticket or admission to an event or access to a loge, skybox, or other premium area unless the official can clearly and convincingly demonstrate that at least one of these conditions obtains:

- The ticket, admission, or access is offered for a reason unrelated to the official's holding or having held a public office;
- The ticket, admission, or access is available to the general public on the same terms and conditions as available to the official; or
- The ticket, admission, or access is without pecuniary value.

In addition, for state officials and organizations that employ lobbyists

A lobbying principal should not give, sell, or furnish or arrange for another to give, sell, or furnish to an elected state official, legislative employee, candidate for state office, or agency official a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is available to the general public on the same terms and conditions or the ticket, admission, or access is without pecuniary value.

An elected state official, legislative employee, candidate for state office, or agency official should not accept or purchase from a lobbying principal a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is available to the general public on the same terms and conditions or the ticket, admission, or access is without pecuniary value.

In addition, for state officials and lobbyists

A lobbyist should not give, sell, or furnish or arrange for another to give, sell, or furnish to an elected state official, legislative employee, candidate for state office, or agency official a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is without pecuniary value.

An elected state official, legislative employee, candidate for state office, or agency official should not accept or purchase from a lobbyist a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is without pecuniary value.

Limited exception

To the extent that an official's participation in an event is in furtherance of substantive or ceremonial governmental responsibilities appropriate to the official's government office so as to be clearly and convincingly for the benefit primarily of the state or a local government and any private benefit is merely incidental, then an individual or organization may provide admission to or accommodation at the event and a state or local public official may attend the event without payment or on terms not available to the general public.

Facts

¶1 This opinion is based upon these understandings:

- a. You are a lobbyist.
- b. Among your clients are organizations that lease “sky boxes” or hold season tickets at various stadiums and arenas in Wisconsin.
- c. A ticket for a single seat in a sky box generally has a face value that does not include a full pro rata share of the cost of leasing the sky box.
- c. In some venues, seats in select areas are sold only as part of a season package and not on an individual game basis.
- d. For some events, such as Green Bay Packers games, season tickets are generally unavailable and single game tickets sell on the open market for a price far above face value.

Questions

¶2 The Ethics Board understands your questions to be:

1. Under what circumstances, if any, may a state or local government official purchase a sky box ticket from a lobbying principal, a lobbyist, or any other party?
2. Under what circumstances, if any, may a state or local government official purchase a regular admission ticket to a sporting event from a lobbying principal, a lobbyist, or any other party?
3. Under what circumstances, if any, may a lobbyist arrange for a state or local government official to procure a ticket to an event from an organization or individual that is neither a lobbyist nor a lobbying principal?

4. May a firm whose employees are contract lobbyists furnish a ticket to an event to a state or local government official if the firm itself is not a lobbying principal?

Discussion

¶3 Both the lobbying law, subch. III, Ch. 13, *Wisconsin Statutes*, and the Code of Ethics for Public Officials and Employees, subch. III, Ch. 19, *Wisconsin Statutes*, have application to your questions. These laws apply to different government officials. We will first discuss application of the lobbying law and then the application of the Ethics Code.

¶4 *Tickets furnished by a lobbyist or a lobbying principal*

Wisconsin's lobbying law prohibits, with limited exceptions, a lobbyist and any lobbying principal to furnish anything of pecuniary value to an elected state official, candidate for elected state office, legislative employee, or agency official.¹ The Ethics Board has addressed at least some of your questions as

¹ Section 13.625, *Wisconsin Statutes*, provides:

§13.625(1) No lobbyist may:

* * *

(b) Furnish to any agency official or legislative employee of the state or to any elective state official or candidate for an elective state office, or to the official's, employee's or candidate's personal campaign committee:

1. Lodging.

2. Transportation.

3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

* * *

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

(3) No candidate for an elective state office, elective state official, agency official or legislative employee of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (4), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).

"Agency official" means a member, officer, employee, or consultant of any state agency who as part of such person's official responsibilities participates in rulemaking activities in other than a solely clerical, secretarial, or ministerial capacity. §13.62(3), *Wisconsin Statutes*.

A "lobbyist" is an individual who contracts for or receives compensation to attempt to influence the legislature or administrative rule-making and who communicates with state officials or employees on at least 5 days in a six-month reporting period. §13.62(11), *Wisconsin*

they pertain to a lobbying principal in 1998 Wis Eth Bd 7. We reaffirm that opinion in which we advised that a lobbying principal neither give nor sell a sky box ticket to a state official who is subject to the lobbying law.

¶5 As the Ethics Board said previously, tickets to a sporting event for which there is a price for admission have pecuniary value.² Whether an individual subject to the lobbying law pays the cost of the ticket is of no consequence. The Attorney General has spoken to this issue and his response is unequivocal.

[There] is persuasive evidence that the Legislature wanted to prohibit the furnishing of a thing of pecuniary value even if something of pecuniary value was furnished in return.

* * *

As you note in your request, if the statute were interpreted as permitting the acceptance of items in exchange for fair value, the Ethics Board would need to determine the fair market value of goods or services exchanged. . . . The potential for abuse inherent in that interpretation is obviated by giving the statute its common and ordinary interpretation. I conclude, therefore, that the prohibition on furnishing things of pecuniary value also prohibits the sale of such things to or purchase of such things from state officials.

80 Op. Att’y Gen. 205 (1992).³

¶6 We are aware of no exception to this prohibition that applies in the circumstances about which you have asked.⁴

Statutes. A “principal” is an organization that employs a lobbyist to lobby on its behalf. §13.62(12), *Wisconsin Statutes*.

² “Pecuniary value” means “consisting of or pertaining to money” or “requiring the payment of money.” 1997 Wis Eth Bd 13, ¶9.

³ *See also* 1996 Wis Eth Bd 8, ¶5 (A legislator may not accept transportation offered by a lobbying principal, even if the legislator pays).

⁴ Section 13.625(2), *Wisconsin Statutes*, does not apply to items that a lobbying principal makes available to the general public. In the unusual instance in which a sky box lessee that is a lobbying principal markets access to its sky box to the general public, a state official may take advantage of the sky box’s availability on the same terms as the sky box is made available to others. *See* 1997 Wis Eth Bd 13, ¶11.

In addition, there may be circumstances in which a public official participates in an event in furtherance of substantive or ceremonial governmental responsibilities appropriate to the official’s government office. If the official can demonstrate that in such instances the official’s attendance is primarily for the benefit of the state, and not for private benefit, an official may attend the event without the need to pay. §§13.625(7) and 19.56(3), *Wisconsin Statutes*.

¶7 *Tickets arranged by a lobbyist or lobbying principal*

You have also asked whether, consistent with the lobbying law, a lobbyist or lobbying principal may arrange for another to furnish a ticket to an individual subject to the lobbying law. The answer is "No." Both the Ethics Board and the Attorney General have consistently said that a lobbying principal may not do indirectly that which the law prohibits the principal from doing directly.⁵

¶8 *Tickets offered to state or local government officials if not furnished or arranged by a lobbyist or a lobbying principal*

Even if a lobbyist or lobbying principal is not involved in the transaction, a state or local public official is subject to the Code of Ethics for Public Officials and Employees, subch. III, Ch. 19, *Wisconsin Statutes*. Generally speaking, state public officials include elected state officials, individuals appointed to a state office by the Governor, and top state agency management.⁶ Local public officials include elected local officials and individuals appointed to a local position for a specified term or to serve at the pleasure of the appointing authority.⁷

¶9 Section 19.45(2), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official
May use his or her public position or office
To obtain anything of substantial value
For private benefit.⁸

⁵ 1999 Wis Eth Bd 4, ¶10; 1996 Wis Eth Bd 17, ¶15; 1992 Wis Eth Bd 27, ¶4; 1991 Wis Eth Bd 8, ¶3; 80 Op. Att'y Gen. 205, 208 (1992).

⁶ See §19.42(13), *Wisconsin Statutes*.

⁷ See §19.42(7w), *Wisconsin Statutes*.

⁸ Section 19.45(2), *Wisconsin Statutes*, provides:

§19.45(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

¶10 Similarly, §19.59(1)(a), *Wisconsin Statutes*, reduced to its element, provides:

No local public official
May use his or her public position or office
To obtain anything of substantial value
For private benefit.⁹

¶11 This means that a public official may not accept anything of substantial value offered or made available to the official because the official holds a state or local public office.¹⁰

¶12 “Anything of value” includes an item of property, a favor, or service.¹¹ An item, favor, or service has “substantial” value if it is of more than nominal

⁹ Section 19.59(1)(a), *Wisconsin Statutes*, provides:

§19.59(1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

¹⁰ 1993 Wis Eth Bd 11, ¶5; 9 Op. Eth. Bd. 17 (1986); 6 Op. Eth. Bd. 13 (1982); 5 Op. Eth. Bd. 71 (1981).

As indicated in n. 4, there may be circumstances in which a state or local public official may participate in an event in furtherance of substantive or ceremonial governmental responsibilities appropriate to the official's government office. If the official's participation is clearly and convincingly for the benefit primarily of the state or a local government and any private benefit is merely incidental, then an individual or organization may provide admission to or accommodation at the event and a state or local public official may attend the event without payment or on terms not available to the general public.

¹¹ §19.42(1), *Wisconsin Statutes*, provides:

§19.42(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

or inconsequential value.¹² Whether an item, favor, or service has substantial value depends on the totality of the circumstances.¹³ Generally, value is determined by the cost to the official of acquiring the same or similar item, favor, or service on the open market.¹⁴

¶13 If an official is offered a ticket for reasons totally unrelated to the official's holding a state or local public office, then acceptance of the ticket is not a use of office. Further, if an official pays the full market value of an item, favor, or service, the official generally cannot be said to be using public position to obtain something of substantial value for private benefit. However, in the case of the offer of a ticket to sit in a sky box or a ticket to a popular event that is sold out, it is difficult to determine the cost the official would incur if purchasing the ticket on the open market. Indeed, there may not even be a market for some types of tickets. Unless the official can clearly and convincingly demonstrate either (1) that the ticket was offered for a reason unrelated to the official's holding or having held a public office, or (2) the official has paid at least the full market value of the ticket, the Ethics Board advises that a state or local public official not accept an offer to purchase a ticket to an entertainment event.¹⁵

Advice

¶14 The Ethics Board advises:

For state and local government officials

Neither a state public official nor a local public official should accept or purchase a ticket or admission to an event or access to a loge, skybox, or other premium area unless the official can clearly and convincingly demonstrate that at least one of these conditions obtains:

- The ticket, admission, or access is offered for a reason unrelated to the official's holding or having held a public office;

¹² 1998 Wis Eth Bd 10, n.7; 1997 Wis Eth Bd 13, ¶4; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

¹³ 5 Op. Eth. Bd. 100 (1982).

¹⁴ 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 58 (1981); 3 Op. Eth. Bd. 60 (1979).

¹⁵ We also note that §19.451, *Wisconsin Statutes*, prohibits an individual elected to local, state, or national office to accept any discount on the price of admission or parking charged to members of the general public, including any discount on the use of a sky box, at a stadium exempt from general property taxes under §70.11(36). At present, this applies to the new Miller Park. We interpret this to mean that an elected official may not obtain a ticket to a sky box seat unless purchased at a price at which a member of the public could purchase such a ticket.

- The ticket, admission, or access is available to the general public on the same terms and conditions as available to the official; or
- The ticket, admission, or access is without pecuniary value.

In addition, for state officials and organizations that employ lobbyists

A lobbying principal should not give, sell, or furnish or arrange for another to give, sell, or furnish to an elected state official, legislative employee, candidate for state office, or agency official a ticket or admission to an event or access to a loge, skybox, or other premium area unless the ticket, admission, or access is available to the general public on the same terms and conditions or the ticket, admission, or access is without pecuniary value.

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Limited exception

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