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**2002 Wis Eth Bd 03**  
**LOBBYING LAW**

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The Ethics Board advises that §13.625, *Wisconsin Statutes*, prohibits a lobbying principal to reimburse expenses of a member of its board of directors who is an agency official.

Facts

- ¶1 This opinion is based upon these understandings:
- a. The Association is a registered lobbying principal in Wisconsin.
  - b. The Association is governed by a board of directors.
  - c. The Governor has appointed a member of the Association's board of directors to serve on a state board.

Question

- ¶2 The Ethics Board understands your question to be:

May the Association continue to reimburse the expenses a member of its board of directors incurs in connection with Association activities if the board member is a member of the state board?

Discussion

- ¶3 Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*, reduced to its elements, provides:

No lobbying principal  
May furnish  
Lodging, transportation, food, meals, beverages, money or any other  
thing of pecuniary value  
To any agency official.<sup>1</sup>

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<sup>1</sup> Section 13.625(1) and (2), *Wisconsin Statutes*, provides:

**13.625 Prohibited practices. (1)** No lobbyist may:

(a) Instigate legislative or administrative action for the purpose of obtaining employment in support or opposition thereto.

(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.

¶4 The Association is a lobbying principal. As we have previously stated, the prohibition applies to a principal's furnishing reimbursement of expenses to a member of its board of directors who is an agency official.<sup>2</sup>

*Agency official*

¶5 The first issue is whether a member of the state board is an agency official. The lobbying law defines an "agency official" as "a member, officer, employee or consultant of any agency who as part of such person's official responsibilities participates in any administrative action in other than a solely clerical, secretarial or ministerial capacity."

¶6 §13.62(3), *Wisconsin Statutes*. In turn, "administrative action" means "the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227." §13.62(1), *Wisconsin Statutes*.

¶7 The state agency with which the board is associated has the authority under *Wisconsin Statutes* to promulgate administrative rules. The agency is headed by the board. It follows that official responsibilities of the members of the board entail participation in the drafting, development, consideration,

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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).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

(d) Contract to receive or receive compensation dependent in any manner upon the success or failure of any legislative or administrative action.

(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.

<sup>2</sup> See 1999 Wis Eth Bd 4 and opinions cited therein.

promulgation, amendment, repeal or rejection of rules. Therefore, members of the state board are agency officials subject to the lobbying law.

*§13.625(6r) exception*

¶8 Section 13.625(6r), *Wisconsin Statutes*, reduced to its elements, provides:

The restrictions in §13.625 do not apply  
To the furnishing of anything of pecuniary value by a principal  
To an employee of that principal  
Who is an agency official solely because of membership on a state  
board  
If what is furnished does not exceed that which the employer  
customarily provides to similarly situated employees  
And the official receives no compensation for state services other  
than a per diem or reimbursement of expenses.<sup>3</sup>

¶9 A member of the state board qualifies for this exception.<sup>4</sup> However, in two prior opinions, the Ethics Board has held that this exception does not apply to a member serving on a lobbying principal's board of directors.<sup>5</sup> You have suggested that a member of the Association board of directors is an employee of the Association and that the exception applies. In our view, a director of an organization is not that organization's employee within the meaning of the statute.

¶10 The lobbying law does not define the term "employee." Thus, we must look to the common and ordinary meaning of the word.<sup>6</sup> The common and

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<sup>3</sup> §13.625(6r), *Wisconsin Statutes*, provides:

**13.625 (6r)** Subsections (1) (b) and (c) and (3) do not apply to the furnishing of anything of pecuniary value by a lobbyist or principal to an employee of that lobbyist or principal who is a legislative official or an agency official solely because of membership on a state commission, board, council, committee or similar body if the thing of pecuniary value is not in excess of that customarily provided by the employer to similarly situated employees and if the legislative official or agency official receives no compensation for his or her services other than a per diem or reimbursement for actual and necessary expenses incurred in the performance of his or her duties, nor to the receipt of anything of pecuniary value by that legislative official or agency official under those circumstances.

<sup>4</sup> See *Wisconsin Statutes*, providing that members of the state board on which the director of the Association serves are eligible to receive reimbursement of expenses and a per diem.

<sup>5</sup> 1999 Wis Eth Bd 06; 1999 Wis Eth Bd 04.

<sup>6</sup> §990.01(1), *Wisconsin Statutes*; *Ervin v. City of Kenosha*, 159 Wis. 2d 464, 464 N.W.2d 654 (1991); *Grosskopf Oil, Inc. v. Winter*, 156 Wis. 2d 575, 582, 457 N.W.2d 514 (Ct. App. 1990).

ordinary meaning of a word can be determined by using a recognized dictionary.<sup>7</sup> An "employee" is "one employed by another usually in a position below the executive level and usually for wages," *Webster's Third New International Dictionary* (1961), or "a person working for another person or a business firm for pay," *The Random House Dictionary of the English Language Second Edition Unabridged* (1987).

¶11 In our view, a director of an organization is not, in general custom and usage, considered an employee of the organization. The Wisconsin Supreme Court has said:

[T]he principal or primary test for determining if an employer-employee relationship exists is whether the alleged employer has a right to control the details of the work.<sup>8</sup>

¶12 In an organization it is the board of directors that control the work of others. The members of the board set goals and policies; they do not follow the directions of others because they do not serve others in the organization.

¶13 You have stated that members of the Association's board of directors are regarded as employees under federal and state statutes relating to taxation and retirement benefits. But the Legislature has provided no such statutory definition in the lobbying law. Indeed, elsewhere in the lobbying law, when the Legislature has intended to create an exception that applies to a director, it has done so explicitly. The Legislature created a similar exception to that found in §13.625(6r) for officers and employees of the University of Wisconsin system and applied it to "a member of the governing body of the principal."<sup>9</sup> Presumably, the Legislature could also have done so in the instant case. It did not.

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If the statutory language is unambiguous, one arrives at the intention of the Legislature by giving language its ordinary and accepted meaning. *Vigil v. State*, 76 Wis. 2d 133, 142, 250 N.W. 2d 378 (1977); *State v. Williquette*, 129 Wis. 2d 239, 385 N.W.2d 145 (1986).

<sup>7</sup> *Id.*

<sup>8</sup> *Village of Prentice v. Industrial Comm.*, 156 N.W.2d 482, 484, 38 Wis.2d 219 (1968), quoting *Ace Refrigeration & Heating Co. v. Industrial Comm.*, 32 Wis.2d 311, 145 N.W.2d 777 (1966).

<sup>9</sup> §13.625(6s), *Wisconsin Statutes*, provides:

**13.625(6s)** Subsections (1) (b) and (3) do not apply to the furnishing of anything of pecuniary value by a principal to an officer or employee of the university of Wisconsin system, or the solicitation or acceptance thereof by such an officer or employee, for service as a member of the governing body of the principal, in an amount not exceeding the amount furnished to other members of the governing body for the same service.

¶14 We believe the Legislature attempted to carve out a narrow exception in §13.625(6r) to permit a part-time member of a state board to continue serving the state and also keep his or her job with an employer that happens to employ a lobbyist. Were it otherwise, any lobbying organization could appoint an official to its board and pay the official not only expenses, but even a hefty director's fee. There would be no limit to the number of organizations on whose board an official could serve. There is no evidence to support a conclusion that this was the Legislature's aim.

Advice

¶15 The Ethics Board advises that §13.625, *Wisconsin Statutes*, prohibits an association that is a lobbying principal to reimburse expenses of a director who is a member of a state board.

(WR1112)

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