
2003 Wis Eth Bd 02
LOBBYING LAW

The Ethics Board advises:

A legislator should not accept compensation from an organization that employs a lobbyist even for services the legislator has provided to the organization; and

In the case of two affiliated organizations, one employing a lobbyist and the other not, a legislator may accept compensation for services from the latter only if the organization can demonstrate that it acts independently of its affiliate.

Facts

¶1 This opinion is based upon these understandings:

- a. You are a member of the Legislature.
- b. You are the sole owner of a company that provides services.
- c. Prior to your election, your company's customers included an organization that employs a lobbyist, and an affiliated organization that does not employ a lobbyist.

Questions

¶2 The Ethics Board understands your questions to be:

1. Do laws administered by the Ethics Board prohibit you, through your company, to accept compensation from an organization that employs a lobbyist to try to influence the actions of Wisconsin's legislature?
2. Do laws administered by the Ethics Board prohibit you, through your company, to accept compensation from an organization affiliated with an organization that employs a lobbyist?

Discussion

¶3 The statute most pertinent to your question is Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*. Reduced to its elements, that section provides:

No lobbying principal
May furnish
Anything of pecuniary value
To an elective state official, and

An elective state official
May not accept
Anything of pecuniary value
From a lobbying principal.¹

¶4 The lobbying law's provisions help assure that an organization that pays individuals to attempt to influence the actions of the legislature is not compromising the independence of a member of the legislature by furnishing financial support to a legislator or to the legislator's business.

¹ Section 13.625, *Wisconsin Statutes*, provides, in relevant part:

13.625 Prohibited practices. (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).

¶5 The Attorney General has said that the lobbying law's restriction applies to situations in which items or services are bought and sold between a lobbying principal and an elective state official for fair consideration, as well as instances in which a principal gives items or services for free to an official. 80 Op. Att'y Gen. 205 (1992); 77 Op. Att'y Gen. 160 (1988).² The law's purpose is to draw a clear line barring private economic transactions (1) between state officials and lobbyists and (2) between state officials and businesses and organizations that pay lobbyists to influence those same officials.

¶6 In other circumstances, the Board has advised that an elected official should not participate in an investment opportunity by purchasing stock offered by a lobbyist (1991 Wis Eth Bd 3); should not sell stock in a closely held corporation to a lobbyist (1992 Wis Eth Bd 5); and should not provide professional services to a principal or accept any compensation related to services provided by the official's employer to a principal (1992 Wis Eth Bd 26). Hence, you should not accept any compensation for providing services to an organization that employs a lobbyist.³

² See 1996 Wis Eth Bd 7. See also, e.g., 1991 Wis Eth Bd 3.

³ The lobbying law does provide an exception that permits a principal to furnish an item or service to a state official "which is also made available to the general public." §13.625(2), *Wisconsin Statutes*. The facts available to us do not provide a basis for finding that the organization makes its business available to the general public.

The phrase "general public"

need not be interpreted as including everyone in the world or even all residents of Wisconsin. On the other hand, something is not made available to the general public simply because the prerequisites to receiving it do not turn on state employment. Something is available to the general public only if it is accessible to the general public. See *American Mut. Liability Ins. Co. v. Fisher*, 58 Wis. 2d 299, 303, 206 N.W.2d 152 (1973). Whether something is available to the general public will always be a question of fact.

* * *

[S]omething is available to the general public if:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are: (a) established and readily identifiable; and (b) drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee or elective state official; and
3. There is no offer or notice of availability directed to an agency official, legislative employee or elective state official with the effect of conferring an advantage not also given others who meet the criteria.

80 Op. Att'y Gen. 205, 212-13 (1992).

A business opportunity is available to the general public if the organization can clearly and convincingly demonstrate that its business is made available through an orderly, established competitive bid process that gives no special advantage to a business owned by a state official.

¶7 You have, I believe, fervently held convictions sympathetic to the goals of the organizations in question. When you stand on the floor of the Legislature to make a case to your colleagues and when you vote in committee, you should be able to put forward your arguments without anyone's being able to undermine the forcefulness of your position by suggestion that you are speaking as someone on the payroll of an organization that is paying lobbyists to influence the Legislature.

¶8 One thrust of the lobbying law is to demonstrate that each of Wisconsin's lawmakers is acting on the merits of proposals and not because of a private financial relationship with a lobbying organization. The best practice is not to do business with an organization affiliated with a lobbying principal unless the non-lobbying organization can demonstrate that it acts independently of the organization engaged in lobbying.⁴

¶9 If an organization is independent of lobbying principals, including the affiliated organization, then Wisconsin's lobbying law does not apply and you may pursue any business arrangement with it. If, however, the two organizations operate under the same or nearly identical directors or if the non-lobbying organization operates under the direction or control of the organization that employs a lobbyist, then you should not accept compensation from it.

Advice

¶10 The Ethics Board advises:

- 1) You should not accept compensation for services your business furnishes to an organization that employs a lobbyist; and
- 2) You should accept compensation from an organization affiliated with the organization that employs a lobbyist only if it is able to demonstrate that it acts independently of the affiliated organization.

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⁴ 1994 Wis Eth Bd 9.