

2004 Wis Eth Bd 03
LOBBYING LAW; SOLICITATION

The Ethics Board advises that:

A legislator may not solicit a lobbyist for a personal or PAC campaign contribution for a legislative candidate or a legislative campaign committee except during the time that the legislator may accept a campaign contribution. A solicitation can include an invitation to a fundraiser even if the invitation has a disclaimer on it that it is not a solicitation to a lobbyist. A legislator may solicit a campaign contribution from a non-lobbyist employee of an organization that employs a lobbyist at any time. A legislator may accept a campaign contribution from a lobbyist's spouse at any time.

Facts

¶1 This opinion is based upon these understandings:

- a. You are a consultant for a legislative campaign committee.
- b. A Senator (Senator X) is in the first year of a four-year term as a state senator and plans to run for re-election.
- c. Another Senator (Senator Y) is in the third year of a four-year term as a state senator and plans to run for re-election.

Questions and Advice

¶2 *Question 1. May Senator Y call a lobbyist to ask for a personal or PAC contribution for a legislative campaign committee before the re-election year?*

No. Senator Y may ask a lobbyist for the lobbyist's contribution or to arrange for another's contribution to a legislative campaign committee only between June 1 and the date of the general election in the year of Senator Y's election.

¶3 *Question 2. May Senator X ask a lobbyist to try to arrange a PAC contribution for Senator Y before the re-election year?*

No. Senator X may ask a lobbyist to arrange for a PAC contribution to Senator Y only between June 1 and the date of the general election in the year of Senator X's re-election.

¶4 *Question 3. When may Senator Y call a lobbyist to ask to whom the Senator can speak at the organization the lobbyist represents about obtaining a campaign contribution?*

Consistent with laws administered by the Ethics Board, Senator Y may call anyone, including a lobbyist, at any time to ask for the names of people that Senator Y may ask for a campaign

contribution as long as the senator does not directly or indirectly ask the lobbyist to furnish or arrange a campaign contribution.¹

¶5 *Question 4. Before June of the year of senator Y's re-election, may Senator Y send to a lobbyist an invitation to a campaign fundraiser if the invitation states that it is not a solicitation but only for informational purposes for the lobbyist's clients?*

No, unless under all the circumstances it is clear that the invitation does not solicit the lobbyist to furnish or arrange a campaign contribution.

¶6 *Question 5. When may Senator Y accept a contribution from the spouse of a lobbyist drawn from a joint checking account?*

Statutes that the Ethics Board administers place no limit on Senator Y's acceptance of a campaign contribution from a lobbyist's spouse.² Key to the law's application is whether the spouse's contribution is truly independent of the lobbyist.

¶7 *Question 6. When may Senator Y call a non-lobbyist employee of an organization that employs a lobbyist to ask for help in obtaining contributions from other employees?*

Any time. The lobbying law places no restriction on a legislator's soliciting a non-lobbyist employee of an organization that employs a lobbyist for a campaign contribution or for assistance in obtaining a campaign contribution from another.

Background

¶8 We have addressed most of the questions you have asked in prior opinions.

Wisconsin's lobbying law

¶9 Wisconsin's lobbying law prohibits a lobbyist to furnish a campaign contribution to a legislator except during specific time periods. Section 13.625 (1) (b) and (c), *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

¹ A lobbyist and organization that employs a lobbyist may advise or urge others to contribute to a candidate, but may not act in concert with a candidate to raise campaign contributions except during the time period when the lobbyist may contribute directly. 1996 Wis Eth Bd 5.

² *Katzman v. Ethics Board*, 228 Wis.2d 282 (Ct. App. 1999).

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

* * *

3. [M]oney 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 has concluded its final floor period, and is not in special or extraordinary session.

¶10 The lobbying law also limits a legislator's ability to solicit or accept a campaign contribution from a lobbyist. Section 13.625 (3), *Wisconsin Statutes*, provides:

13.625 (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).

(Emphasis added).

What is a solicitation?

¶11 The first question is what does it mean to solicit. "Solicit" means "to make solicitation or petition for something desired," *American Heritage Dictionary* (3d ed. 1992); "to seek to influence or incite to action," "to make a petition or request," *Random House Dictionary of the English Language* (2d ed. Unabridged 1987); "to approach with a request or plea," *Webster's Third*

New International Dictionary (1981); “to try to obtain by requests or pleas, *Webster’s Ninth New Collegiate Dictionary* (1983).” The restriction on soliciting does not cover only an explicit request. Rather, one must look at the totality of the circumstances to determine whether, by written or oral communication, or other conduct, a request is being made. We agree with the United States Supreme Court, which said, in a case interpreting the meaning of a federal statute using the phrase “solicitation of orders for interstate sales,”

We think it evident that in this statute the term includes, not just explicit verbal requests for orders, but also any speech or conduct that implicitly invites an order. Thus, for example, a salesman who extols the virtue of his company’s product to the retailer of a competitor’s brand is engaged in “solicitation” even if he does not come right out and ask the retailer to buy some.

Wisconsin Dept. of Revenue v. William Wrigley, Jr. Co., 505 U.S. 214, 223 (1992).³

¶12 Because an invitation to a fundraiser is likely to be viewed as just that or as a request to solicit others for contributions, particularly given the current culture of campaign fundraising, simply adding language that the invitation is not a solicitation will not definitively determine that an invitation is not a solicitation.⁴

Soliciting a lobbyist to furnish a contribution to another

¶13 The operative language of the statute is that a legislator may not solicit a lobbyist for anything of pecuniary value “except as permitted” by the referenced paragraphs. The statute is somewhat unclear because it prohibits a legislator to solicit anything of pecuniary value from a lobbyist “except as permitted” in other paragraphs, but not all the paragraphs referred to mention solicitation. We have always understood the statute to have the common sense meaning that a legislator may not solicit anything that a lobbyist may not permissibly furnish as set out in the referenced paragraphs.

³ 1997 Wis Eth Bd 8 ¶¶5 and 6.

⁴ The lobbying law prohibits a legislator *to solicit or accept* anything of pecuniary value except as permitted. The lobbying law also prohibits a legislator’s personal campaign committee *to accept* a contribution except as permitted, but the statute neither expressly prohibits nor permits a campaign committee *to solicit* contributions. This is a distinction with little difference. To the extent that the committee acts at the behest, and as an agent, of a candidate, the candidate cannot shield himself or herself from the law’s restrictions. As we have said in the past, the law does not permit an official to solicit through an agent that which the law prohibits the individual to solicit directly. 1998 Wis Eth Bd 5, ¶10; 1996 Wis Eth Bd 14, ¶6.

¶14 The issue then is whether the statute's restrictions on soliciting apply only if a legislator is soliciting something for the legislator's own benefit. It should not. The Board has consistently said that the prohibition on soliciting in §13.625 applies regardless whether the item or service solicited is directed toward the official's own benefit or to the benefit of another.⁵ This interpretation comports not only with the plain meaning of the statute, it is supported by the legislature's creation of specific exceptions when the legislature has wanted to permit the solicitation of contributions from lobbyists and lobbying principals for specific state programs. §§13.625 (8) and (9). These provisions would be superfluous if §13.625 (3) was meant only to prohibit the solicitation and acceptance of contributions by an official for his or her own benefit, a result to be avoided in statutory interpretation. The need for these provisions is predicated on a legislative understanding that the prohibition on soliciting includes soliciting for the benefit of others such as state agencies and programs.⁶

Soliciting a lobbyist to obtain a contribution from another

¶15 A third issue is whether the statute's restrictions on soliciting apply only if an official is soliciting a contribution from the lobbyist's own pocket. There is nothing in the statute's language to support such a limited reading. The language of the lobbying law does not distinguish between a legislator soliciting a lobbyist to furnish something of pecuniary value directly and soliciting a lobbyist to arrange for another's furnishing something of pecuniary value.⁷

Soliciting a lobbyist for a future contribution

¶16 A fourth issue is whether the statute's restrictions apply to a solicitation for a contribution that is intended to be made when a contribution is permitted if the solicitation is made at a time during which a contribution is not permitted. We believe that it does. The statute essentially says that a legislator may not solicit a contribution except as the furnishing of a contribution is permitted. Since the furnishing of a contribution is limited to a specific time period, the statute must be read to restrict soliciting except during the permitted period. Any other reading would defeat the statute's purpose of creating separation between the time during which contributions are sought from and made by those attempting to influence the Legislature and the time during which legislators are conducting legislative business.

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⁵ 1998 Wis Eth Bd 5 ¶14; 1998 Wis Eth Bd 2 ¶15; 1995 Wis Eth Bd 7 ¶8.

⁶ See, e.g., *State Central Credit Union v. Bigus*, 101 Wis.2d 237 (Ct. App. 1981); 80 Op. Att'y Gen. 19 (1991).

⁷ 1997 Wis Eth Bd 8 ¶7. Cf. 1996 Wis Eth Bd 5.