

personalized gift you have asked about. Furthermore, were the official to ask we would advise him or her not to accept this gift if it were offered to him under the circumstances which you described in your letter of 12 August to the Ethics Board.

We refrain from offering any advice concerning your company's actions with respect to officials of the United States or to officials of other states.

* * * *

LEGISLATORS; OFFICERS, DIRECTORS AND MEMBERS OF ORGANIZATIONS;
EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES;
DISQUALIFICATION

A legislator should not participate in votes, deliberations, discussions, or other legislative activity likely to affect a business with which he or she is associated except to the extent that:

- a. the legislator's actions affect the whole class of similarly situated businesses,
- b. the business's presence in the class is insignificant when compared to the number of members of the class, and
- c. the legislator's actions' effects upon the business are neither significantly greater nor less than upon other members of the class. Eth. Bd. 234

September 10, 1981

Facts

- a. You are a member of Wisconsin's legislature and are a state public official.¹
- b. People to whom you are closely related but who are not members of your immediate family hold a controlling interest in a corporation based in Wisconsin.
- c. You are neither an officer nor a director of the company and have not been employed by it since becoming a member of Wisconsin's legislature.

¹ Secs. 19.42(13)(c) and 20.923(2)(a)6, *Wisconsin Statutes*, provide in part:

19.42(13) "State public office" means:
(c) All positions identified under s.20.923(2). . . .

20.923(2)(a)6. Legislature, members. . . .

- d. You are the beneficiary of a trust which owns a building which the trust rents to the company. You are also a beneficiary of a trust which holds interest bearing notes issued by the corporation.
- e. The company conducts business with the State of Wisconsin and has done so for many years prior to your election to Wisconsin's legislature.
- f. You are a member of a legislative committee that reviews proposals to modify Wisconsin's laws that affect businesses like the one about which you have inquired.

Questions

The Ethics Board understands your questions to be:

- a. What impediment, if any, does Wisconsin's Ethics Code pose to your continuing your present relationship with the company about which you have asked while you participate actively on the legislative committee that reviews proposals to modify Wisconsin laws that affect businesses of that type?
- b. Would the Ethics Board's response to the preceding question vary if, while continuing to serve in the legislature and as a member of the committee you have mentioned, you became an employee of the company; undertook work for it as an independent contractor; acquired stock in the company; or became an officer or director of the corporation?

Discussion

The Ethics Code bars a state public official from using his or her public position 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.² Moreover, a legislator must notify the presiding officer of his or her house whenever, in the discharge of his or her official duties the legislator is involved or about to be involved in a matter in which the legislator's action or failure to act could reasonably be expected to assist in producing a substantial benefit for an organization with which the legislator is associated.³

² Sec. 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.

³ Sec. 19.46(1), *Wisconsin Statutes*, provides in part:

Association with a Business

"Associated" when used with reference to an organization includes an organization in which a person or a member of his or her immediate family⁴ (1) is a director, officer or trustee; or (2) owns or controls, directly or indirectly, separately or together, at least 10% of the outstanding equity.⁵ The statute identifies only some of the circumstances by which a person may be associated with an organization.⁶ Because of your economic and familial ties with the company, we consider you, for purposes of this advice, to be associated with that business.

Material and Unavoidable Conflicts Distinguished

The Ethics Code recognizes that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature, that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material.⁷

19.46 Action Upon Conflict. (1)(a) Any state public official who, in the discharge of his or her official duties, is involved or about to be involved in any matter that could result in a material conflict of interests on his or her part shall:

1. Prepare a written statement describing such matter and the nature of the possible conflict of interests; and

2. Deliver copies of the statement to the board. . .and in the case of a legislator to the presiding officer of his or her house. . .

(b) Where the presiding officer of either house of the legislature receives a statement from a member of the house under para. (a)2, the officer shall cause such statement to be printed in the journal and, upon request of the legislator, shall excuse him or her from votes, deliberations and other actions in regard to such matter.

(e) A material conflict of interests. . .is deemed to exist. . .whenever:

1. The official's action or failure to act could reasonably be expected to produce or assist in producing a substantial benefit, directly or indirectly, for such official or his or her immediate family or an organization with which he or she is associated; or

2. The matter in question is one in which the official in his or her private capacity or a member of his or her immediate family or an organization with which he or she is associated has a substantial interest.

⁴ "Immediate family" refers to: (1) your spouse if you are married and (2) to any of your relatives from whom you receive more than 1/2 of your financial support or for whom you provide a majority of his or her financial support. Sec. 19.42(7), *Wisconsin Statutes*.

We understand that you have no immediate family as the term is used in the ethics code.

⁵ Sec. 19.42(2), *Wisconsin Statutes*.

⁶ An official may also associate himself or herself with an organization by lending his or her name to it for the organization's solicitation of funds. Minutes, Meeting of the Ethics Board, Closed Session, July 15, 1980.

Moreover, a contract for professional services might associate a person with a business. 4 Op. Eth. Bd. 97 (1981).

⁷ Sec. 19.45(1), *Wisconsin Statutes*.

Something may be adjudged substantial either in absolute terms or relative to other things. With respect to application of Wisconsin's Ethics Code, an action does not confer a substantial benefit upon an organization if (1) the action affects an entire class of similarly situated organizations, (2) the organization's presence in the class is insignificant when compared to the number of members of the class, and (3) the actions' effects upon the organization are neither significantly greater nor less than upon other members of the class.

Entrance Into Contract Paid From State's Funds

No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into a contract or lease involving a payment or payments of more than \$3,000 within a 12 month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of the relationship or interest to the Ethics Board and to the department acting for the state in regard to the contract or lease.⁸

We understand that neither you nor a member of your immediate family owns or controls 10% or more of the outstanding equity or voting rights of the company. We observe that you have a beneficial interest in all or a portion of the company's outstanding indebtedness. If you have a beneficial interest in more than 10% of the business's outstanding indebtedness you should make the appropriate disclosure.

Advice

The State of Wisconsin Ethics Board advises you that you should not participate in votes, deliberations, discussions, or other legislative activity likely to affect the business about which you have asked, except to the extent that:

⁸ Sec. 19.45(6), *Wisconsin Statutes*, provides:

19.45(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of the date on which the ethics board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s.946.13.

- a. Your actions affect the whole class of similarly situated businesses,
- b. The business's presence in the class is insignificant when compared to the number of members of the class, and
- c. Your actions' effects upon the business are neither significantly greater nor less than upon other members of the class.

Our advice remains the same regardless of whether you maintain your present relationship with the company, or alter your relationship with the business by becoming an officer, director, shareholder, or employe of the business.

If you have the beneficial ownership of or control 10% or more of the outstanding equity, voting rights, or outstanding indebtedness of the company or acquire such an interest, then before the company may enter into a contract involving payments of more than \$3,000 within a 12-month period derived in whole or in part from State funds, you must give written notice of the nature and extent of your relationship with the company to the Ethics Board and to the agency acting for the State in regard to the contract.