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2005 Wis Eth Bd 06  
LOBBYING LAW

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The Ethics Board advises that a member of a state board should either (1) not accept employment by a business or organization that employs a lobbyist or (2) notify the board of which the official is a member that the official is withdrawing from any participation in the modification of the board's rules.

¶1 You asked whether laws administered by the Ethics Board restrict your simultaneously being a member of a state board and representing and receiving remuneration from a business or organization that employs a lobbyist. You also indicated that your representation could include lobbying on behalf of those clients.

¶2 Wisconsin Statutes provide that you not simultaneously derive income or receive reimbursement of expenses from a lobbyist or an organization that employs a lobbyist and, as a state official, exercise responsibility for the adoption, modification, or repeal of administrative rules. §13.625, *Wisconsin Statutes*; 80 Op. Att'y Gen. 205 (1992).

¶3 The lobbying law's restrictions apply to an agency official. An "agency official" includes a member of a state board "who as part of such person's official responsibilities *participates* in any administrative action." [Emphasis added]. §13.62(3), *Wisconsin Statutes*. "Administrative action" means the "proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch.227." The language of the statute defining an "agency official" does not refer to a person who holds rulemaking responsibilities, but rather one who participates in rulemaking. If you do not participate in rulemaking, you are not an agency official.\*

¶4 You should either (1) not accept employment by a business or organization that employs a lobbyist or (2) notify the board of which you are a member that you are withdrawing from any participation in the modification of the board's rules. If you elect the latter course, please provide a copy of your letter withdrawing from rulemaking to the Ethics Board.

¶5 In deciding whether or not to withdraw from rulemaking responsibilities, bear in mind that a public official has an obligation to faithfully discharge the duties of his or her office. §19.01 (1), *Wisconsin Statutes*. If withdrawing from rulemaking materially impedes your ability to fulfill your responsibilities as a public official, you should consider withdrawing from the position so that another appointee may participate fully in the activities of the board. Even so, the court,

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\* A board member withdrawing from participation in rulemaking is not an agency official subject to the lobbying law. Minutes, Wisconsin Ethics Board, meeting of July 18, 2002.

in *Wrzeski v. City of Madison, Wisconsin*, 558 F. Supp. 664 (W.D. Wis. 1983) held that a public official has a First Amendment right not to vote on an issue.

¶6 The Board advises that you not represent or work for, or take compensation from, any lobbying principal that (1) attempts to influence your board's administrative rulemaking or legislative matters affecting your board, or (2) that does business with or has a demonstrated interest in the affairs of your board.

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