
2006 Wis Eth Bd 04
GIFTS; LOBBYING; MEALS, LODGING, TRAVEL, AND ENTERTAINMENT

The Ethics Board advises that:

1. A state public official attending a conference or convention may accept educational or informational material or other item for the purpose of conveying it to the State of Wisconsin for the use or benefit of a state office or agency.
2. Except as just noted, a state public official should not accept from a lobbying principal or lobbyist anything of pecuniary value or from anyone else any item of more than token value. This is so, regardless of whether the official was to retain it or furnish it to another for other than governmental use.
3. A state official should not accept, without full payment, a meal or drink offered at a conference or convention unless it is provided, arranged, or sanctioned by the event's sponsor.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You write on behalf of a state agency.
 - b. The agency is a member of a national association of state agencies with a similar function.
 - c. The national association holds an annual convention and trade show.
 - d. Your agency sends officials subject to the Ethics Code as well as other employees to the convention.
 - e. Vendors that sell items to your agency have booths at the convention from which the vendors give away tote bags, baseball caps, mugs, t-shirts, pens, watches, jackets, and other merchandise usually emblazoned with either the vendor's logo or a logo licensed by another, such as Harley-Davidson.
 - f. Many of the vendors are lobbying principals in Wisconsin.

Questions

¶2 The Ethics Board understands your questions to be:

1. May a state public official or employee accept and retain merchandise furnished by vendors to all convention participants?
2. May a state public official or employee accept merchandise furnished by vendors to all convention participants and give the items to agency's employees in a drawing at staff meetings?
3. May a state public official or employee accept a dinner or other meal furnished by a vendor and made available to all convention participants?

Discussion

¶3 Your questions, as they pertain to state public officials and employees with rulemaking responsibilities, are addressed by the Ethics Code for State Public Officials and the lobbying law.¹ Pursuant to these statutes, a state public official should not accept any item made available at a conference or convention by a vendor that is a lobbying principal or any item of more than token value made available by any vendor, with limited exceptions.² A state official should not accept any meal offered at a conference or convention unless it is provided, arranged, or sanctioned by the event's sponsor.

Items furnished at convention

¶4 The Ethics Code, §19.45 (2), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official
May use his or her office or position
To obtain anything of substantial value
For private benefit.³

¹ Your questions, as they pertain to state employees who are not state public officials, are addressed by Wis Admin Code ER-MRS ch. 24, an administrative rule promulgated by the Office of State Employment Relations.

² As we put it in 1995 Wis Eth Bd 2, ¶8:

State officials should not for their private benefit accept items made available directly by vendors at [a] conference . . . unless the items are of insubstantial value and the vendor is not a lobbying principal.

³ Section 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. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

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

No agency official
May accept anything of pecuniary value
From any business or organization that employs a lobbyist
Unless the business or organization also makes the item available to the general public.⁴

¶6 *Use of office.* Accepting a gift offered because of one's public position is a use of one's office.⁵ This includes accepting a gift offered at a convention or conference at which the official is present at the behest of or on behalf of the State of Wisconsin.⁶ The gift is available to the official because of the official's employment and because the State has directed the official to attend the convention. The only connection the official has with the vendor is by virtue of the official's holding a public position.

¶7 It would be improper for a state official to accept a gift furnished by a vendor in the official's office even if the vendor also gave such gifts to other customers in other states or in the private sector. The location of the gift giving does not alter the law's application. A vendor making gifts available to convention attendees is no different than a vendor giving gifts to customers or potential customers when making an office visit.⁷

⁴ Section 13.625 (1), (2), and (3), *Wisconsin Statutes*, provides:

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 11 Op. Eth. Bd. 1 (1989); 9 Op. Eth. Bd. 43 (1987); 5 Op. Eth. Bd. 71 (1981).

⁶ 1991 Wis Eth Bd 5, ¶3.

⁷ In 1993 Wis Eth Bd 11, the Ethics Board addressed the issue of an official's accepting a prize the official won through a drawing. There we said that an official may retain a prize awarded by chance available to anyone attending the conference where the great majority of conference attendees were not Wisconsin officials. In that circumstance, the connection between receipt of the prize and holding public office is too remote to conclude that public office was used to obtain the prize.

¶18 *Available to the general public?* Only if a gift were truly made available to the general public would acceptance of the gift not be a use of office. It would also permit an official to accept the gift even from a business or organization that employs a lobbyist.⁸ An item is available to the general public if:

- (i) the item is available to anyone who wants it;
- (ii) the official is not given a preference or advantage in obtaining the item; and
- (iii) there is no offer or notice of the availability of the item directed to an official that would confer an advantage to the official.

¶19 A gift that is available only to convention attendees is not available to the general public. Members of the public are not generally invited to attend conventions and are unlikely to be made aware of the opportunity to visit vendor booths to obtain gifts.

¶10 *Substantial benefit – pecuniary value.* The Ethics Code prohibits an official to use his or her position or office to obtain anything of substantial value for private benefit. The thrust of the law is to prohibit an official to use public office or position to obtain any gift, but the law does not concern itself with trivialities. An official may accept a gift of token or inconsequential value, in contrast to an item of merchantable value.⁹ Because the statutes do not establish a dollar value, it is left to the official's discretion, in the first instance, to determine whether an item has more than token or inconsequential value. Some tote bags, caps, t-shirts, mugs, pens, rulers, refrigerator magnets, or key chains, containing a company's logo, are likely to be of inconsequential value. Other items, such as jackets or watches, are likely to have more than inconsequential value.

¶11 The lobbying law imposes an even stricter standard. If an item is offered by a business or organization that employs a lobbyist, an official may accept the item only if it has no pecuniary value. Almost any item is likely to have pecuniary value.

¶12 *Item for state use or benefit.* Both the Ethics Code and lobbying law apply to an official's accepting a gift for personal benefit. Educational materials related to the subject matter of the conference or convention or to matters relating to a state agency's responsibilities are likely to be primarily of benefit to the state and may be accepted. Similarly, an item that can be used by a state agency in

⁸ The lobbying law applies to all agency officials. Section 13.62 (3), *Wisconsin Statutes*, provides:

13.62 (3) "Agency official" means 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.

"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*.

⁹ 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

fulfilling its responsibilities may be accepted on behalf of the agency, as long as the items are not simply furnished to other agency employees for personal use.¹⁰

Meals

¶13 The Ethics Code, §19.45 (3m), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official
May accept any meals, food, or beverage
except in accordance with §19.56 (3), *Wisconsin Statutes*.¹¹

¶14 Section 19.56 (3) (c), *Wisconsin Statutes*, reduced to its elements, provides:

A state public official
May accept meals, food, and beverages
That the official can show by clear and convincing evidence
Is received on behalf of the State of Wisconsin
And primarily for the benefit of the State and not for private benefit.¹²

¶15 If your agency has directed or approved an individual's attendance at a conference or convention, then an individual may partake of a meal if it is provided, arranged, or sanctioned by the event's sponsor. Otherwise, the individual should pay the full cost of any meal and submit a reimbursement request to the state for that amount up to the maximum permitted.¹³

¹⁰ Section 19.45 (3), *Wisconsin Statutes*, prohibits an official to accept anything of value if it could reasonably be expected to influence official action. Section 19.45 (3), *Wisconsin Statutes*, provides:

19.45 (3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

Pursuant to this provision, the Ethics Board has consistently advised state agencies not to *solicit* contributions for state agency activities from any person who does business with the agency. 1998 Wis Eth Bd 5; 1998 Wis Eth Bd 2; 1996 Wis Eth Bd 14; 1995 Wis Eth Bd 7; 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9 (1986); 7 Op. Eth. Bd. 19 (1983).

¹¹ Section 19.45 (3m), *Wisconsin Statutes*, provides:

19.45 (3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefore, except in accordance with s. 19.56 (3).

¹² Section 19.56 (3) (c), *Wisconsin Statutes*, provides:

19.56 (3)(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

¹³ See Ethics Board Guideline Eth 222 (attached).

Other state employees

¶16 State employees, other than state public officials, are subject to the provisions of Wis Admin Code ER-MRS ch. 24. ER-MRS 24.04 (2) (a) provides:

No employee may use or attempt to use his or her public position . . . to influence or gain financial or other benefits, advantages or privileges for the private benefit of the employee.

¶17 The Ethics Board does not administer this provision.

¶18 A state employee whose duties include participation in rulemaking is also subject to the lobbying law, as noted above, and may not accept anything of pecuniary value from an organization that employs a lobbyist.

Advice

¶19 The Ethics Board advises that:

1. A state public official attending a conference or convention may accept educational or informational material or other item for the purpose of conveying it to the State of Wisconsin for the use or benefit of a state office or agency.
2. Except as just noted, a state public official should not accept from a lobbying principal or lobbyist anything of pecuniary value or from anyone else any item of more than token value. This is so, regardless of whether the official were to retain it or furnish it to another for other than governmental use.
3. A state official should not accept, without full payment, a meal or drink offered at a conference or convention unless it is provided, arranged, or sanctioned by the event's sponsor.