
2007 Wis Eth Bd 9
LOCAL OFFICIALS -- DISQUALIFICATION

The Ethics Board advises:

- (1) If a matter before a town board, is reasonably likely to have more than a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD ABSTAIN from discussion, deliberation, and votes on that matter.
- (2) If a matter before a town board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor SHOULD PARTICIPATE; and
- (3) If reasonable people cannot reasonably foresee the effect of a board of supervisors' action on a supervisor's financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor's financial interest is too speculative to deny the supervisor's participation in related discussion, deliberation, and votes, and the supervisor SHOULD PARTICIPATE UNLESS, in the supervisor's judgment, to do so would undermine public confidence in the decision or in government.

Facts

¶1 We base this opinion upon these understandings:

- a. You are a town's attorney.
- b. A supervisor on the town board owns and resides on a parcel of land adjacent to a town-owned park.
- d. The board of supervisors may have, in future meetings, occasions to consider improvements or alterations to the park.

Question

¶2 The Ethics Board understands your question to be:

Does the supervisor's ownership of property proximate to the town park limit the supervisor's involvement in the board of supervisors' future discussions, deliberations, and votes concerning improvements to and alterations of the park?

Discussion

¶3 Reduced to its elements, section 19.59(1) (a), Wisconsin Statutes, provides:

No local 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.¹

¶4 Reduced to its elements, section 19.59(1) (c) 1. and 2., *Wisconsin Statutes*, provides:

Except for taking official action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses or taking official action with respect to a proposal to modify a municipal ordinance,

No local public official may:

Take any official action

Substantially affecting a matter

In which the official, a member of his or her immediate family, or an organization with which the official is associated or has a substantial financial interest.

AND

No local public official

May use his or her office or position

In a way that produces or assists in the production of a substantial benefit

For the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.²

¶5 The supervisor is a local public official.³ This opinion addresses those instances in which the supervisor uses the office or position of supervisor or takes official action including the discussion, deliberation, or vote on matters before the town board of supervisors.

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local 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.

² Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1) (c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

³ See 1997 Wis Eth Bd 6, ¶6; 1999 Wis Eth Bd 01, ¶4.

¶6 Whether the foregoing statute prevents a supervisor's discussion, deliberation, and vote on a matter before the town board depends upon whether the supervisor has a personal substantial financial interest in a matter. "Substantial" contrasts with "nominal value" and may be synonymous with "merchantable value"⁴ Substantial value is something more than token or inconsequential value.⁵ The Ethics Board has never found it necessary to establish the least value that may be quantified as substantial.⁶

¶7 The issue is one of fact. Public policy supports a government official's exercise of official duties when the financial effect of an official decision on the official's personal interests is uncertain and conjectural.⁷ In 1998, the question was whether a member of a city council could properly vote on whether to extend public utilities to an area in which the member owned a house. The Board said:

It is not clear that extension of service to the affected area or retention of the status quo will result in a private benefit of substantial value. You have indicated that the municipality is likely to require a substantial payment from the owner of each property to which water and sewer service is extended. On the other hand, these households may avoid the cost of maintaining wells and septic systems. Property values may be affected. The private benefits and costs are several and, in part, offsetting. In contrast, the public benefits from the provision of public water and sewer service may include added groundwater protection and improved public health. *If a public official's participation or action on government policy is neither forbidden nor antagonistic to public policy, then public policy favors a public official's exercise of his or her official duties.*⁸

4 A wholesale quantity of brochures had substantial value; 1997 Wis Eth Bd 13 ¶4. 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982), 73 (1981).

5 2005 Wis Eth Bd 5 ¶7; 1998 Wis Eth Bd 2 ¶8; 1995 Wis Eth Bd 5 ¶6; 7 Op. Eth. Bd. 22 (1983)

6 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982), 58 (1981).

7 See 2002 Wis Eth Bd 05.

8 See, e.g., 1995 Wis Eth Bd 3, ¶12; 8 Op. Eth. Bd. 33 (1985). We also note the expression of the legislature's intent set out in §19.45(1), *Wisconsin Statutes*. Although that portion of the Ethics Code is addressed to state officials, we believe it has relevance to local officials as well. In that section, the legislature has stated:

19.45 (1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; 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; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or

1998 Wis Eth Bd 1, ¶10 (emphasis added).

Advice

¶8 The Ethics Board advises:

- (1) If a matter before the town board, is reasonably likely to have more than a trivial, insignificant, or insubstantial financial effect on the supervisor, then the supervisor SHOULD ABSTAIN from discussion, deliberation, and votes on that matter.
- (2) If a matter before the town board will have no effect or only a trivial, insignificant, or insubstantial financial effect on the supervisor, then the supervisor SHOULD PARTICIPATE; and
- (3) If reasonable people cannot reasonably foresee the effect of the board of supervisors' action on the supervisor's financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor's financial interest is too speculative to deny the supervisor participation in related discussion, deliberation, and votes, and the supervisor SHOULD PARTICIPATE UNLESS, in the supervisor's judgment, to do so would undermine public confidence in the decision or in government.

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business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

Section 19.45(1), *Wisconsin Statutes*.