
2007 Wis Eth Bd 12
GIFTS; IMPROPER USE OF OFFICE

The Ethics Board advises that a legislator or legislative employee may accept from a state agency a chance to win a gift card valued at \$25 to \$30 for responding to a survey the agency conducted.

Facts

- ¶1 We base our opinion on these understandings:
- a. You write on behalf of a state agency.
 - b. The agency has recently sent out a survey to legislators and legislative staff as part of a research project.
 - c. To encourage participation in the survey, the agency has advertised that it will hold a drawing for a gift card with a value of \$25-\$30.

Questions

- ¶2 The Ethics Board understands your question to be:

Consistent with Wisconsin's Code of Ethics for Public Officials, may a legislator or legislative employee accept a chance to win a gift card valued at \$25 to \$30 for responding to a state agency's survey?

Discussion

¶3 Section 19.45 (2), *Wisconsin Statutes*, is the provision of Wisconsin's Code of Ethics for Public Officials that is most pertinent to your question. Reduced to its elements, § 19.45 (2), *Wisconsin Statutes*, provides, in pertinent part:

No state public official
May use public position or office
To obtain anything of substantial value
For the private benefit of the official.¹

- ¶4 Legislators and legislative employees are state public officials.²

¹ 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. * * * *

² Section 19.42 (13) (c) and (14), *Wisconsin Statutes*.

¶5 An official's accepting an item offered because the individual holds a government position is a use of office.³

¶6 A gift card with a value of \$25 to \$30 is something of value,⁴ and its value is substantial.⁵

¶7 An official may accept an item or service if the receipt of the item is primarily for the state's benefit, even if there is an incidental private benefit to the official.⁶ A number of factors indicate the agency's offer of the chance to win a gift card is primarily for the state's benefit: (1) a state agency is conducting the survey; (2) the agency is undertaking research on issues of importance to state government to be shared with the Legislature; (3) the chance to win a gift card creates an incentive for officials to respond to the survey.

Advice

¶8 The Ethics Board advises that a legislator or legislative employee may accept from the state agency a chance to win a gift card valued at \$25 to \$30 for responding to a survey the agency conducted.

WR1272

³ See, e.g., 2006 Wis Eth Bd 04, ¶61995 Wis Eth Bd 5, ¶5; 4 Op. Eth. Bd. 71 (1980).

⁴ Section 19.42 (1), *Wisconsin Statutes*.

⁵ "Substantial" is anything more than token or inconsequential value and may be synonymous with "merchantable value". 2006 Wis Eth Bd 4, ¶10; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981). This opinion does not address whether the chance to win is something of substantial value.

⁶ 2003 Wis Eth Bd 1, ¶6; 1997 Wis Eth Bd 13, ¶5; 1996 Wis Eth Bd 15, ¶5; 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982).