
2008 GAB 07
**IMPROPER USE OF OFFICE; LOBBYING & LOBBYISTS; LOCAL
OFFICIALS**

The Government Accountability Board advises that the company may not provide a discount to state or local government officials covered by the Ethics Code or lobbying law, even if the discount is made available to employees of the company's other customers, but may provide a discount if the state or a local government has negotiated discounts for its employees as part of a contract with the company.

Facts

¶1 You write on behalf of a company which is a nationwide wireless telecommunications company. The company is a provider on a current contract with the State of Wisconsin. The company is also an organization that employs a lobbyist in Wisconsin. The company wants to offer customer discounts on its products and services to state employees and to employees of local governments in Wisconsin.

Questions

¶2 You ask the following questions:

1. May the company offer the proposed discounts to state or local government employees?
2. May the company offer the proposed discounts if its contract with the State or with a local government provides for such discounts?
3. May the company offer the proposed discounts if it routinely offers such discounts to its private and governmental customers across the country?

Discussion

¶3 The company employs a lobbyist in Wisconsin. Hence, both the Ethics Code and Wisconsin's lobbying law apply to your question. For the reasons that follow, the company may not offer its proposed discount to state officials or employees covered by the lobbying law or to state or local officials covered by the Ethics Code, unless the discount is provided pursuant to a contract that the company has entered into with the state or a local government. These restrictions apply even if the company routinely offers such discounts to its private and governmental customers across the country.

Lobbying law

¶4 The lobbying law, §13.625, Wisconsin Statutes, reduced to its elements, provides that:

No lobbying principal
may furnish
anything of pecuniary value
to a covered state official or employee
and no covered state official or employee
may accept anything of pecuniary value
from a lobbying principal.¹

¶5 The lobbying law applies only to certain state officials and employees, and not to local government officials or employees. Not every state official or employee is subject to the lobbying law – only state elective officials, legislative employees, and agency officials. “Agency official” means a member, officer, employee, or consultant of any agency who as part of such person’s official responsibilities participates in any rulemaking activity in other than a solely clerical, secretarial, or ministerial capacity.² The lobbying law’s prohibition on

¹ Section 13.625, *Wisconsin Statutes*, provides, in relevant part:

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.

² 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.

Section 13.62 (1), *Wisconsin Statutes*, provides:

furnishing applies to situations both in which items or services are bought and sold between a lobbying principal and a covered state official or employee, as well as instances in which a principal gives items or services for free.³

¶6 An exception to the lobbying law provides that the prohibition does not apply to the furnishing of anything of pecuniary value “which is also made available to the general public.”⁴ The Attorney General has said that

[T]he phrase need not be interpreted as including everyone in the world or even all residents of Wisconsin. On the other hand, something is not made available to the general public simply because the prerequisites to receiving it do not turn on state employment.

* * *

[S]omething is available to the general public if:

1. It is available to anyone who wants it and who meets the criteria for eligibility,
2. The criteria are (a) established and readily identifiable; and (b) drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee, or elective state official; and
3. There is no offer directed to an agency official, legislative employee, or elective state official with the effect of conferring an advantage not also given others who meet the criteria. ⁵

¶7 Here, the criteria are specifically drawn with the purpose of conferring an advantage to state employees, many of whom are covered by the lobbying law. Even if others may also obtain the advantage, the average citizen may not. For this reason, the company may not make a discount available to elective state officials, legislative employees, or agency officials. As a practical matter, this may mean it may not offer the discount to any state employee unless the

13.62 (1) “Administrative action” means the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227.

³ 80 Op. Att’y Gen. 205 (1992); 77 Op. Att’y Gen. 160 (1988); 2003 Wis Eth Bd 2, ¶5; 1996 Wis Eth Bd 7, ¶4; 1991 Wis Eth Bd 3, ¶6.

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

13.625 (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.

⁵ 80 Op. Att’y Gen. 205, *supra*, 212-13.

company is willing to determine which officials and employees are subject to the lobbying law and which are not.

Ethics Code

¶8 The Ethics Code provides that no state or local public official may use his or her office or position to obtain anything of substantial value for private benefit.⁶ State and local public officials are defined by statute but do not include every state and local government employee. A discount on cell phones or cell phone service is likely to be of substantial value. Accepting items offered because an official holds a public position is a use of office. This is so, even if the company may offer the same discount for to employees of its other customers. The issue is whether an official is offered the discount because of holding his or her governmental position. Hence, it is improper for a state or local official to accept a discount available to the individual because of his or her government status, even if the discount may be available to others for other reasons.

Effect of state or local government contract

¶9 Although the Ethics Code generally prohibits a public official to use his or her position to obtain anything of substantial value for private benefit, the Ethics Code does not prohibit an official to accept monetary compensation or other benefits provided or arranged by the state. The Legislature has defined "anything of value" to exclude compensation and expenses paid by the state." §19.42 (2), *Wisconsin Statutes*.⁷ We agree with the Ethics Board that if the

⁶ 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.

Section 19.59 (1) (a), *Wisconsin Statutes*, provides, in relevant part:

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.

⁷ Section 19.42 (2), *Wisconsin Statutes*, provides:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a

state, or a local government, has negotiated a contract that provides a benefit to its employees that is within the government's prerogative. It is not improper for an employee to take advantage of a benefit that the employer provides.⁸

¶10 Further, even if Wisconsin's lobbying law generally forbids a state official to accept anything of pecuniary value from a business that employs a lobbyist, we agree with the Ethics Board that it is fair to say that the company would not be offering anything to the state's employees; rather, it is offering the State of Wisconsin a benefit that the state, as an employer, may extend to its employees. If the state accepts a provision in its contract with the company to provide a discount to state employees, then employees may accept the benefit that their employer confers.

Advice

¶11 The Government Accountability Board advises that the company may not provide a discount to state or local government officials covered by the Ethics Code or lobbying law, even if the discount is made available to employees of the company's other customers, but may provide a discount if the state or a local government has negotiated discounts for its employees as part of a contract with the company.

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purpose unrelated to state business by a person other than an organization.

Although the definition only refers to compensation paid by the state, we believe the Ethics Code must obviously be read to permit local government official to receive compensation and expenses from local governments.

⁸ 2004 Wis Eth Bd 4.