

DISQUALIFICATION

A legislator should not participate in official discussions, deliberations, or votes with respect to legislation to sustain or alter a statute affecting the requirements for the official's spouse's employment unless the action affects a whole class of similarly-situated interests, the legislator's interest is insignificant when compared to all affected interests, and the action's effect on the legislator's private interests is neither significantly greater nor less than upon other people affected by the act. Eth. Bd. 525

November 1, 1989

Facts:

This opinion is based upon these understandings:

- a. You are member of Wisconsin's Legislature.
- b. Wisconsin's Legislature may take up a bill to alter state law affecting the requirements for the occupation in which your spouse is employed.

Question

The Ethics Board understands your question to be:

May you, in your official capacity, discuss, deliberate upon, and vote upon a bill that materially affects the requirements for the occupation in which your spouse is employed?

Discussion

We recommend that you not participate in official discussions, deliberations, or votes with respect to legislation to sustain or alter a statute affecting the requirements for your spouse's employment unless the action affects a whole class of similarly-situated interests, your interest is insignificant when compared to all affected interests, and the action's effect on your private interests is neither significantly greater nor less than upon other people affected by the act.

STATUTES CONSIDERED

Of the Ethics Code's various provisions, sections 19.45(2) and 19.46(1), *Wisconsin Statutes*, are pertinent. Of these, the latter is without application to the circumstances you have described because, by its very terms, it does not "prohibit a state public official from taking official action with respect to any proposal to modify state law.¹ Thus, we turn our attention to 19.45(2).

USE OF OFFICE FOR PRIVATE ADVANTAGE

Reduced to its elements section 19.45(2), *Wisconsin Statutes*, provides:

No state public official
May use public position
To obtain anything of substantial value
For the private benefit of the official or the official's family.²

You are a state public official. Deliberation and votes on legislation necessarily involves use of public position. Employment and the interest in continued employment is something of substantial value.³ Thus, you may not use your position as a state legislator *in order to obtain* your spouse's employment.⁴

PERSONAL ADVANTAGE vs. PUBLIC POLICY

Thus, resolution of this matter turns on whether your participation in this matter would be to obtain an advantage for you and your immediate family or, alternatively, to effect some public policy, the personal implications of which are only incidental.

When a legislator is called upon to propose or to act on legislation, the legislator may, consistent with the Ethics Code, participate in that action, even though the action will affect the official, as long as:

- a. The legislator's action affects a whole class of similarly-situated interests,
- b. The legislator's interest is insignificant when compared to all affected interests in the class, AND
- c. The legislator's action's effect on the legislator's private interests is neither significantly greater nor less than upon other members of the class.⁵

We have-equipped you with the principles that ought to govern your actions as the factual circumstances reveal themselves or alter.

Advice

The State of Wisconsin Ethics Board recommends that you not participate in official discussions, deliberations, and votes with respect to legislation to sustain or alter a statute affecting the requirements for your spouse's employment unless the action affects a whole class of similarly-situated interests, your interest is insignificant when compared to all affected interests, and the action's effect on your private interests is neither significantly greater nor less than upon other people affected by the act.

It is our impression that the legislation you are likely to deal with will be directed toward articulating a definite state-wide policy of application to a large class. If that is so, then you ought to participate in discussion, deliberations, and votes affecting this matter. In any event, we recommend that you not participate in discussions, deliberation, and votes that so narrow the bill's scope as not to articulate a policy but to obtain a specific result with respect to your household.

¹ Section 19.46(3), *Wisconsin Statutes*, provides

19.46(3) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employe benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

² 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.

³ 19.42(1), *Wisconsin Statutes*, provides:

19.42(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, honorariums and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

⁴ Apart from the Code's requirements there is authority for the proposition that legislators are disqualified from voting on matters in which they have direct pecuniary interests adverse to the state, (*Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879), holds at page 213: "The general rule of the common law is, that members of a legislative body are disqualified to vote therein on proposition in which they have a direct pecuniary interest adverse to the state or municipality which they represent." The circumstances under which a member of a school board must excuse himself from participation in matters affecting his personal interests is discussed at *Marlaire et al v. Madison Metropolitan School District No. 8, et al*, Circuit Court for Dane County, Case #80CV2101, opinions issued 16 May and 13 June 1980.), but the Attorney General has noted that a resolution prohibiting legislators who are lawyers from voting on bills

affecting judges would unconstitutionally deny equal protection of the law to citizens represented by legislators who are lawyers (67 OAG 310 (1978)).

- ⁵ 8 Op. Eth. Bd. 38 (1985), 22 (1984); 5 Op. Eth. Bd. 90 (1982), 67 (1981), 61 (1981); 4 Op. Eth. Bd. 104 (1981).

A lawyer official may participate in the promulgation of rules affecting lawyers of which more than 15,000 are licensed in Wisconsin. An official with a financial interest in a business may participate in actions that affect businesses generally. A farmer appointed to a board may act on rules establishing or implementing general agricultural policy, and a revenue official may act on tax policy except in the rare instance in which a provision affects a small number of taxpayers, including the official, in a way that differs from its effect on a large segment of Wisconsin's residence. 8 Op. Eth. Bd. 38 (1985).