
2019 ETH 01
ETHICS & LOBBYING – SERVICE ON A BOARD OF DIRECTORS

You are an agency official and state public official with the University of Wisconsin System. You have asked for an advisory opinion regarding your eligibility to serve on the boards of three separate organizations and, if permitted to serve, you have asked for any guidance the Commission could offer to avoid any potential ethical issues or conflicts of interest during your service on these boards.

Summary:

It is the opinion of the Commission that you may serve on the board of directors of these organizations.

Analysis:

As an official for the University of Wisconsin System, you are an agency official and state public official subject to the restrictions of the lobbying law and the code of ethics for public officials. This advice provides an overview of the general restrictions under the lobbying law and code of ethics for state officials that will apply to you and advises on steps to take to avoid any potential future conflicts of interest regarding these boards.

A. Lobbying Law Restrictions

The lobbying law provides one general restriction that would apply to you as a state public official: state public officials may not accept anything of value from a lobbyist or a lobbying principal. [WIS. STAT. § 13.625\(1\)\(b\)](#). One of the organizations you inquired about is a registered lobbying principal. In your request, you indicated that you would receive approximately \$7,000 annually for your service on this board of directors.

Ordinarily, such compensation would be prohibited because you are an agency official; however, Wisconsin law provides an explicit exception to the otherwise blanket prohibition for officers or employees of the University of Wisconsin System who are serving as members of the governing bodies of lobbying principals as long as the amount received is not in excess of that furnished to other members of the governing body for the same service. [WIS. STAT. § 13.625\(6s\)](#). Assuming that other members of the board of directors are similarly paid, this compensation is not a violation of the lobbying law.

B. Code of Ethics Restrictions

First, as a threshold matter, in some parts of the code of ethics, the restrictions are triggered not only by the interests of the official, but also those of his or her family, or organizations with which he or she is associated. “Associated” within the meaning of the code of ethics includes “any organization in which an individual or a member of his or her immediate family is a director, officer, trustee, or owns or controls, directly or indirectly, and severally or in aggregate, at least 10

percent of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.” [WIS. STAT. § 19.42\(2\)](#).

As a member of the board of directors you would be associated with two of the organizations described within the terms of the code of ethics. However, it is not clear from your description of the third board that your role with that board rises to the level of association under the code of ethics as this board has no decision-making authority. However, to avoid any appearance of impropriety, while serving on this advisory board you may wish to treat that organization similarly to how the law would require you to act for either of the other two organizations.

There are five statutory sections in the code of ethics that provide general restrictions on state public officials.

1. [WIS. STAT. § 19.45\(2\)](#) provides that a public official may not use their public position or office to obtain financial gain or anything of substantial value to benefit themselves, their family, or an organization with which they are associated. However, this restriction does not prohibit your service as a member of a board of directors and being compensated for your efforts as long as your invitation to serve was offered irrespective of your holding state office. [1992 Wis Eth Bd 18](#).
2. [WIS. STAT. § 19.45\(3\)](#) provides that an official should not accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence their official actions or judgment. This restriction is not meant to be a broad prohibition from outside employment. However, our predecessor agencies have advised that accepting compensation from an entity could reasonably be expected to influence an official’s actions on issues and matters of interest to the entity. [2004 Wis Eth Bd 06](#).

As such, you should seek to avoid specific conflicts of interest by not participating in discussion, deliberations, or votes that would relate to issues or matters that are specific to any of these entities. If there are discussions and votes that affect a broad issue or matter that merely relates to these entities and does not specifically affect only the entity’s interests, you may participate. Additionally, you may participate in discussions, deliberations, and votes regarding budgets and other larger projects that may only have small components which pertain to issues and matters that arise due to your membership on these boards. [2004 Wis. Eth. Bd. 06](#).

3. [WIS. STAT. § 19.45\(3m\)](#) provides that a state public official may not accept food, drink, transportation, lodging, or meals except as provided.

While you did not indicate receipt of any food or beverage in your opinion request, it is a common practice for organizations to provide food and beverages to their governing boards when they are present for a meeting. As indicated above, there are many exceptions to this particular prohibition, but most relevant to your service on these boards is most likely the exception of [WIS. STAT. § 19.56\(3\)\(b\)](#), which provides that an official may accept anything of value if the activity or occasion for which it is given is unrelated to the official’s use of state resources and the reason for which it is offered is unrelated to the recipient’s holding

or having held public office. In this matter, any food or drink you may be provided is likely offered due to your position on that board and not your public position and as such is it likely you may accept any such offers.

4. [WIS. STAT. § 19.45\(4\)](#) prohibits you from intentionally using or disclosing information gained in the course of your duties or by reason of your position in any way that could result in any value for yourself or any other person, if the information is not public.

You indicated in your request for advice that one of the organizations has a contractual relationship with the university and that the university is also seeking a philanthropic partnership with the organization. However, in neither case have you been personally or substantially involved. To ensure you do not violate this provision, you should be wary of discussing with any of your boards the confidential information you may have obtained by way of your public office that has not yet been made public. You should also be careful to avoid taking or prompting any action based on your confidential knowledge that would benefit these entities.

5. Finally, [WIS. STAT. § 19.45\(5\)](#) requires that no state public official may use or attempt to use the public position held by the official to influence or gain unlawful benefits, advantages, or privileges personally or for others.

As indicated above, where an organization has a contractual relationship with the university, you have followed State of Wisconsin purchasing procedures and have not been involved directly or indirectly in this contract. While this provision does not require association, you are well-advised to continue to ensure that proper procedures are diligently followed when the university may have dealings with the organization or any other entity with which you are associated.

Potential Future Conflicts of Interest

During your tenure as a state public official, conflicts of interest may arise if any of the entities you are associated with have matters that may come before you as an official. [WIS. STAT. § 19.46\(1\)](#) prohibits state public officials from engaging in official action that would provide substantial benefit to or substantially affect an interest of themselves, their family, or organizations that they are associated with. See [2006 Wis. Eth Bd 03](#). Accordingly, you should refrain from taking an official action that would substantially benefit or substantially affect an organization with which you would be associated by serving on its board of directors. Again, while not legally required, to avoid the appearance of impropriety you may also wish to treat the third organization similarly. As discussed above regarding [WIS. STAT. § 19.45\(3\)](#), there may be situations in which these organizations are interested where you may still act. You may take an action if it would affect a whole class of similarly-situated interests, the interests of the organization with which you are associated are not significant when compared to all affected interests in the class, and the action's effect on the interests of the organization with which you are associated are not significantly more or less impacted than the rest of the class.

In situations where you believe you may be conflicted from taking official action due to your membership on these boards, you should not participate in any discussion, deliberations, or votes related to the matter and should make a record of your withdrawal from participation. You may also contact us to request a further advisory opinion specific to that matter with a proposed course of action for the Commission to consider. For more information on how to mitigate potential conflicts of interest, see our [Guideline 1240](#).

[REDACTED]

June 14, 2018

Wisconsin Ethics Commission
P.O. Box 7125
Madison, WI 53707-7125

Dear Wisconsin Ethics Commission,

I would like to request a confidential opinion as a state public official subject to Chapter 19, Wis. Stats., as to my membership on three corporate boards in my local area to assure they do not present potential conflicts of interest with my [REDACTED] at the University of Wisconsin - [REDACTED]. Also, could you advise me about the steps I could take to avoid any potential conflicts of interest or appearances of conflicts of interest regarding my participation on these boards? Below is description of the boards on which I sit and a description of my relationship to them:

[REDACTED] Board of Directors. [REDACTED] I have served as a member on this fiduciary board of directors since November 2012. For approximately the past two years, I have also served on and chaired the audit and compliance committee of this non-profit organization. I attend four board meetings a year and approximately four committee meetings per year, which I take as vacation time from my role as [REDACTED]. I receive \$7,000 annually for my service on the [REDACTED] Board of Directors.

[REDACTED] has a contractual relationship with the university. Under the current agreement, [REDACTED] provides annual sponsorships to the university's [REDACTED]. The yearly amounts range from [REDACTED] to assist the university in staffing and facility support for our [REDACTED] program, as well as [REDACTED] annually for [REDACTED]. The [REDACTED] provides [REDACTED] to the university for [REDACTED]; an [REDACTED], [REDACTED]; and [REDACTED].

This contract was awarded following State of Wisconsin purchasing procedures. A Request for Proposals was issued as outlined in Pro-C-1 (Competitive Bidding Policy) and Pro-C-5 (Bidding Policy and procedure, Official Sealed Bid). The request was posted on VendorNet and disbursed to [REDACTED] bidders. [REDACTED] vendors responded, and their responses were evaluated using a point system by an Evaluation Committee. The committee was established in accordance with Pro-C-29 (Evaluation Committee). The resulting contract is a [REDACTED]-year agreement with the option to renew for [REDACTED] additional [REDACTED] periods.

In my role as [REDACTED], I was not involved, directly or indirectly, in exercising any discretionary decision authority as [REDACTED] involving this contract, or any negotiations, awards, promotions, or other activities that substantially and/or financially benefit [REDACTED].

Further, during the time that I have served on this board, the university has been pursuing a philanthropic partnership with [REDACTED]. Discussions have been ongoing for the better part of [REDACTED], but as of this writing no definitive agreements have been reached. What is taking shape is an arrangement in which [REDACTED] will support efforts by the university to produce more graduates trained in [REDACTED] that

can bolster the regional work force thus playing an important role in workforce development for our region. We anticipate that [REDACTED]'s financial support will be in the form of annual gifts from their foundation to the university to equip more students with professional skills that would be useful to all [REDACTED] in the region. Should the final details be worked out, the agreement would manifest between the administrative staff at [REDACTED] and the university's dean of the College of Professional Studies (working in concert with University Advancement and the UW-[REDACTED] Foundation). In other words, the [REDACTED] board on which I serve is not involved in decisions of this kind. Moreover, while I have been involved in some of the discussions with [REDACTED] staff over the past year and a half in my role as [REDACTED], I have stayed largely out of these conversations, deferring to our dean of the College of Professional Studies to represent the university and advance these negotiations.

Additionally, the [REDACTED] Compliance Office annually surveys all directors to identify any potential conflicts of interest (see [REDACTED] Conflict of Interest Disclosure form attached). These forms are reviewed by their compliance officer who refers to the audit and compliance committee any situations that may require a management plan and her recommendation regarding such a plan. I always disclose the university's business relationship with [REDACTED] and each year the committee has concluded that no management plan is needed. Of course, I recuse myself from this discussion and decision. The university's business relationship with [REDACTED] has never been a topic of discussion at a board meeting and the board was not involved in deciding to enter into this relationship with the university. This was a [REDACTED] management decision. Should, in the future, any business relationship with the university become a topic for board consideration, I would recuse myself from the discussion and any vote that might be taken.

[REDACTED] Board of Directors. [REDACTED] I have served as a board member on this fiduciary board of directors since July 25, 2011. I also serve on and chair the board's governance committee. I attend four board meetings and approximately two committee meetings a year, which I take as vacation time from my role as [REDACTED]. I receive approximately \$13,200 annually for my service on this board.

[REDACTED] has a minor business relationship with the university. [REDACTED] is a student organization at the university operating under the auspices of the Department of English. [REDACTED] publishes one book per year. [REDACTED] printed [REDACTED] copies of [REDACTED] for [REDACTED], donating half the cost for printing the first 1,000 copies. This in-kind contribution by [REDACTED] did not come before the board of directors.

In my role as [REDACTED], I am not involved directly or indirectly in exercising any discretionary decision authority involving any contracts, negotiations, awards, promotions or other activities that substantially or financially benefit [REDACTED].

[REDACTED] Advisory Board. [REDACTED] I have served as an advisory board member on this non-fiduciary board since April 26, 2012. I attend four meetings a year, which I take as vacation time from my role as [REDACTED]. I receive \$3,200 annually for my service on this board. The board has no decision-making authority and [REDACTED] does not have a business relationship with the university.

Thank you for your assessment and advice regarding my service on these boards.

Sincerely,

[REDACTED]

Conflict Of Interest Disclosure

The purpose of this Disclosure Form is to disclose conflicts or potential conflicts with respect to [REDACTED] and/or an Affiliated Organization of [REDACTED]

The term "Affiliated Organization" includes:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This Disclosure Form requires you to provide information not only with respect to you but also with respect to certain persons related to you. These persons are termed "Related Persons" and include the following:

1. Your spouse, children (and their spouses), step-children, parents, siblings (and their spouses), step-brothers, step-sisters, grandchildren and great grandchildren (and their spouses), grandparents, and great-grandparents.
2. Any corporation or organization (other than [REDACTED] or an Affiliated Organization) in which you are a board member, an officer, a trustee, a member, or a partner.
3. Any corporation or organization in which you participate in management (other than [REDACTED] or an Affiliated Organization).
4. Any corporation or organization in which you are employed (other than [REDACTED] or an Affiliated Organization).
5. Any publicly traded company in which you are a debt holder or have an ownership interest that exceeds \$50,000 in value as determined through reference to public prices or other reasonable measures of fair market value.*
6. Any publicly traded company in which you own more than 50% of the ownership of any single entity.*
7. Any privately held entity (an entity which is not publicly traded) in which you are the holder of any debt or any ownership interest, regardless of the value.
8. Any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.
9. Any corporation or organization in which you hold intellectual property rights (e.g. patents, copyrights, and royalties from such rights).

*Not including any interests in pooled funds (e.g. diversified mutual funds, 401(k) or retirement plans, etc.) managed by an independent fiduciary.

Please answer the following questions to the best of your ability, sign, and date.

We understand that you may not know what interests your family members hold. Please disclose to the best of your knowledge.

1. Name:

2. Capacity you serve or any Affiliated Organization

(e.g. Board Member, Administrator)

3. Have you or any of your Related Persons PROVIDED services or property to or an Affiliated Organization in the past year or plan to provide services or property to or an Affiliated Organization during the upcoming year (**excluding those provided in your capacity as you answered in Question 2**)?

☐ Yes ☐ No

If yes, please describe the nature of the services or property and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

Please list any family members employed by or Affiliated Organization:

4. Have you or any of your Related Persons PURCHASED services or property from [REDACTED] or an Affiliated Organization in the past year or plan to purchase services or property from [REDACTED] or an Affiliated Organization during the upcoming year (**excluding services received as a [REDACTED]**)?

☐ Yes ☐ No

If yes, please describe the purchased services or property and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

5. Please indicate whether you or any of your Related Persons had any direct or indirect interest in any business transaction(s) in the past year in which [REDACTED] or an Affiliated Organization was or is a party or plan to have any direct or indirect interest in any business transactions to which [REDACTED] or an Affiliated Organization will be a party during the upcoming year?

☐ Yes ☐ No

If yes, please describe the transactions and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

6. Were you or any of your Related Persons indebted to pay money to [REDACTED] or an Affiliated Organization at any time in the past year (**excluding business travel advances or the like; and excluding indebtedness in the capacity as a [REDACTED]**)?

☐ Yes ☐ No

If yes, please describe the indebtedness and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

7. In the past year, did you or any of your Related Persons receive or become entitled to receive, directly or indirectly, any personal benefits from [REDACTED] or an Affiliated Organization that in the aggregate could be valued in excess of \$1,000, that were not or will not be compensated directly related to your duties to [REDACTED] or an Affiliated Organization?

☐ Yes ☐ No

If yes, please describe the benefit(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

8. Are you or any of your Related Persons a party to or have an interest in any pending legal proceeding involving [REDACTED] or an Affiliated Organization (other than any [REDACTED] actions insured under [REDACTED]'s self-insurance plan)?

☐ Yes ☐ No

If yes, please describe the proceeding(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

9. Are you aware of any other events, transactions, arrangements, or other situations that have occurred or may occur in the future that you believe should be examined by [REDACTED] or an Affiliated Organization? This includes any conflicts of loyalty where you as an Interested Person owe duties to another body or organization which conflict, or which may appear to conflict, with your responsibilities to act in the best interest of [REDACTED] or Affiliate Organization as a member of a [REDACTED] board, for example.

☐ Yes ☐ No

If yes, please describe the events, transactions, arrangements, situations, or proceeding(s) and if a Related Person is involved, the identity of the Related Person and name of Related Person's business, and your relationship with that person:

I HEREBY CONFIRM that my responses to the above questions are complete and correct to the best of my information and belief. **(Note: By answering "YES" to this question, you are affirming that your responses are complete and correct.)**

☐ Yes ☐ No

Signature

Date

FOR [REDACTED] BOARD MEMBERS ONLY:

BUSINESS RELATIONSHIPS AND FAMILY RELATIONSHIPS AMONG DIRECTORS

Because you are a member of the Board of Directors of [REDACTED], please answer on the following pages if you have a family relationship or business relationship with any other director.

Family Relationship means the individual is any of the following: your spouse, your brother, your sister, a spouse of your brother or sister, your ancestor, your child, your grandchild, your great grandchild, a spouse of your child, a spouse of your grandchild, or a spouse of your great grandchild.

A "Business Relationship" is defined as any of the following:

- One person is employed by the other in a sole proprietorship.
- One person is employed by an organization in which the other is associated as a trustee, director, officer, key employee, or greater than 35% owner.
- One person is transacting business with the other (other than in the ordinary course of business of either party's business on the same terms as are generally offered to the public) directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization's tax year. Indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater than 35% owner.
- The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity. ♣

"Ownership" is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (for example, ownership in an entity that has ownership in the entity in question). There may be ownership through multiple ties of entities.

****Privileged relationships (e.g., doctor/patient, attorney/client, clergy/penitent) do not need to be disclosed.**

Please check the box(es) as appropriate if you have a family relationship or business relationship with any of the following individuals who are also serving on the Board of Directors of

[REDACTED]

[REDACTED]
☐

☐

Business Relationship

☐

Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

- ☐ Business Relationship
- ☐ Family Relationship

[Redacted]

[Redacted]

☐ Business Relationship

☐ Family Relationship

[Redacted]

[Redacted]

☐ Business Relationship

☐ Family Relationship

[Redacted]

[Redacted]

☐ Business Relationship

☐ Family Relationship

[Redacted]

[Redacted]

☐ Business Relationship

☐ Family Relationship

[Redacted]

[Redacted]

☐ Business Relationship

☐ Family Relationship