
2008 GAB 03
LOCAL OFFICIALS

The Government Accountability Board advises that ¶19.59, *Wisconsin Statutes*, does not prohibit a county board from hosting an appreciation dinner for county employees nor county employees from accepting the dinner. Section 19.45 (3) prohibits a district attorney and circuit court judge from accepting the meal without paying for it.

Facts

¶1 You are a County Corporation Counsel and write on the county's behalf. The county board wants to hold an employee recognition dinner for county employees. The county would pay the cost of the dinner, estimated at less than \$15.00 for each meal, from county funds, although not from tax-generated revenues.

Questions

¶2 You have asked two questions: (1) whether the County Board may, consistent with laws administered by the Government Accountability Board, use county funds to pay for the employee recognition dinner and (2) whether county officials and employees as well as the district attorney and a circuit court judge may, consistent with those laws, attend that dinner.

Discussion

Local officials

¶3 Two provisions of Wisconsin's Code of Ethics for Local Public Officials, §19.59, *Wisconsin Statutes*, apply to your question as it pertains to local officials.¹ Section 19.59 (1) (a), *Wisconsin Statutes*, reduced to its elements, provides that:

- 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

¹ The circumstances about which you have asked also raise the question whether the county has the authority to use public funds for a county employee appreciation dinner. We understand that the Attorney General's office has informally opined that a county has the authority to host such a dinner under §59.03 (1), *Wisconsin Statutes*.

In addition, the public purpose doctrine requires that public monies be used only for a public purpose. The Attorney General's office has stated:

The public certainly benefits from a county work force whose contributions to the betterment of the county and its citizens are appreciated and recognized. The county board has the general authority to provide benefits to county employees. The county board can decide, in the exercises of its discretion, that one of those benefits would be to host an employee recognition dinner.

- Of the official, a member of the official's immediate family, or an organization with which the official is associated.²

¶4 Section 19.59 (1) (b), *Wisconsin Statutes*, reduced to its elements, provides that:

- No person may give to a local public official
- And no local public official may accept
- Anything of value
- If it could reasonably be expected to influence the official
- Or could reasonably be considered a reward for any official action on the part of the official.³

¶5 A local public official subject to these provisions includes an elected official, a county administrator, an official appointed to serve for a specified term, and an official who serves at the pleasure of the county board or executive head of the county. §19.42 (7w), *Wisconsin Statutes*. County civil service employees are unlikely to be subject to the restrictions of the Ethics Code.

Section 19.59 (1) (a)

¶6 For a local official who is subject to §19.59, accepting a meal offered because the individual holds a government position would be a use of office.⁴ “Substantial value” is anything of more than token or inconsequential value.⁵ We think it is likely that an appreciation dinner, even if the cost of a meal does not exceed \$15 is of more than token or inconsequential value.

¶7 The key issue, then, is whether the employee appreciation dinner is for “private benefit.” The Ethics Board long recognized that receipt of an item may result in both a public as well as a private benefit. The test the Ethics Board developed, which we adopt, is whether the benefit conveyed is primarily a private or a public benefit.⁶ In our view, a county employee appreciation dinner hosted

² Section 19.59 (1) (a), *Wisconsin Statutes*, provides, in relevant part:

19.59 (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.

³ Section 19.59 (1) (b), *Wisconsin Statutes*, provides:

19.59 (1) (b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

⁴ See 1993 Wis Eth Bd 11, ¶5; 1991 Wis Eth Bd 5; 9 Op. Eth. Bd. 17 (1986); 5 Op. Eth. Bd. 71 (1981).

⁵ See, e.g., 2007 Wis Eth Bd 05; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

⁶ 2007 Wis Eth Bd 14, n. 5; 2007 Wis Eth Bd 07, n. 5. Even if acceptance of an item or service is of private benefit to a state official, the official may still accept an item or service if the public, rather than the official, is the primary beneficiary. 1997 Wis Eth Bd 13 ¶5. Even if there is a private benefit associated with an act, it is consistent with the Ethics Code if the private benefit is merely incidental to the public benefit. 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982). The test is not whether there is any personal benefit; the issue is whether the benefit conveyed is primarily a personal benefit. 2003 Wis Eth Bd 1 ¶6 citing 1996 Wis Eth Bd 15, ¶5; 1996 Wis Eth Bd 02, ¶6. The statutory restriction does not apply when an

by county supervisors has a public benefit. Such a dinner can enhance employee morale, boost employee retention, and lead to a more motivated work force. When weighed against the rather modest value of the dinner, we think the public benefit of the dinner outweighs the private benefit to the few individual employees who are subject to the statute.

Section 19.59 (1) (b)

¶8 The prohibition in §19.59 (1) (b) applies both to donors and recipients. Setting aside the question whether any recipients of the dinner will be local public officials, we think it is unreasonable to expect a dinner whose value is under \$15 and that is being offered by the county itself, not by private persons that might be seeking a contract, grant, license, or other decision from the county, to influence any employee's official actions. Nor do we believe a county dinner that recognizes employees' overall work could reasonably be considered a reward for "any official action." We understand that language to refer to a specific action, not to general accomplishments.⁷

State officials

¶9 A district attorney and a circuit court judge are state public officials subject to the restriction in 19.45 (3m), *Wisconsin Statutes*, that they not accept a meal unless a specific exception applies under §19.56 (3), *Wisconsin Statutes*.⁸ There is no exception that we believe applies. The officials are not presenting a talk, the meal is not being offered for a reason unrelated to their holding public office, and acceptance of the meal does not benefit the State of Wisconsin.

Advice

¶10 The Government Accountability Board advises that ¶19.59, *Wisconsin Statutes*, does not prohibit the county board from hosting an appreciation dinner for county employees nor county employees from accepting the dinner. Section 19.45 (3) prohibits a district attorney and circuit court judge from accepting the meal without paying for it.

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item or service is primarily for public benefit, and not primarily for private benefit. 2001 Wis Eth Bd 01; 1997 Wis Eth Bd 13, ¶5; 2 Op. Eth. Bd. 47 (1978).

⁷ Moreover, the prohibition should not be read to include expenses paid by the county for its officials and employees. Section 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 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.

(Emphasis added). Although the statute refers to expenses paid by the state, we think the reason for the exclusion applies equally to a local government's payment of expenses and compensation to its officials.

⁸ Section 19.45 (3), *Wisconsin Statutes*, provides:

19.45 (3) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefore, except in accordance with s. 19.56 (3).