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**1992 Wis Eth Bd 1**  
**LOBBYING**

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An employee does not violate the so-called "gag" law if he or she communicates with the legislature in his or her capacity as a union officer.

OEB 92-1

March 24, 1992

Facts

[1] This opinion is based upon the understanding:

A state employee is also an officer of a state employees union.

Question

[2] The Ethics Board understands your question to be:

Does a state employee who also is the officer of a state employees union violate Section 19.45(12), *Wisconsin Statutes*, when he or she corresponds with or talks to state legislators about matters of concern to the union which also involve the budget of the department in which he or she is employed?

Discussion

[3] Section 19.45(12), *Wisconsin Statutes*, provides:

1. No agency, as defined in s. 16.52(7), or officer or employee thereof may present any request, or knowingly utilize any interests outside the agency to present any request, to either house of the legislature or any member or committee thereof, for appropriations which exceed the amount requested by the agency in the agency's most recent request submitted under s. 16.42.

[4] In OAG 41-88 (August 23, 1988), Attorney General Donald J. Hanaway concluded that the law could not regulate a state employee's right to express his or her opinions as a private individual, because if the law purported to do so, it would be unconstitutional. Otherwise stated, § 19.45(12) applies only to state employees and officers in their capacities and when they are acting as state employees and state officers. If the employee is discussing budget matters as an individual, or as a representative of a union, or as a representative of some other group of which he or she is a member, §19.45(12) is simply inapplicable.

[5] Of course, it is important that the state employee makes certain that the legislator or committee understands that he or she is expressing private opinions or opinions held by the groups the employee represents and not expressing opinions on behalf of the department in which he or she is employed. Needless to say, the employee cannot conduct these private activities on state time using state resources or state facilities.

Advice

[6] An employee does not violate the so-called "gag" law if he or she communicates with the legislature in his or her capacity as a union officer.