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**1992 Wis Eth Bd 22**  
LOCAL CODE – DISQUALIFICATION;  
LOCAL CODE – IMPROPER USE OF OFFICE

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A village board member should not participate in official discussions, deliberations and votes with respect to legislation (that is, ordinances and the like) affecting his or her real estate interests except to the extent that the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board member's private interests is neither significantly greater nor less than upon other interests affected by the act.

The village board member ought not to participate in quasi-judicial deliberations or decision-making such as actions on permits, licenses, rezoning of specific parcels, and the like affecting the member's interests or competing real estate interests.

In those instances in which the member should refrain from votes, the member should also refrain from discussion and deliberations and ask that the minutes reflect that the member has withdrawn. OEB 92-22

June 16, 1992

Facts

- [1] This opinion is based upon these understandings:
- a. You are a village attorney.
  - b. You indicate that an individual who has been elected to the Village Board owns options to buy nine lots in subdivisions owned by a development company.

Questions

- [2] The Ethics Board understands your questions to be:
1. May this individual serve as a member of the Village Board?
  2. What restrictions, if any, does the Code of Ethics for Local Government Officials and Employees impose on the Board member's ability to participate in discussion and votes concerning issues directly affecting the development company or subdivisions in the Village?

## Discussion

[3] The provisions of the Code of Ethics for Local Government Officials and Employees most pertinent to the question you have raised are § 19.59(1)(a), (c) and (d), *Wisconsin Statutes*. Section 19.59(1)(a), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates. (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. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

[4] Section 19.59(1)(c) and (d), *Wisconsin Statutes*, provides:

**19.59(1)(c)** Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

[5] First, no provision of the Ethics Code would prohibit any individual from serving in a local elected office. Resolution of the other questions you have asked turns on whether the official's participation in matters would be to obtain a personal advantage or, alternatively, to effect some public policy, the personal implications of which are purely incidental.<sup>1</sup>

### Creating or modifying an ordinance

[6] The Ethics Board has long taken the position that when an official is called upon in a legislative capacity to propose or to act on a legislation, the

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<sup>1</sup> 11 Op. Eth. Bd. 9, 10(1989).

official may, consistent with the Ethics Code, participate in an action, even though it will affect the official's financial interests, 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.<sup>2</sup>

[7] The Ethics Board has held that 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 residents.<sup>3</sup>

[8] On the other hand, a village board member should not participate in the creation, repeal, or modification of an ordinance if (1) the change would affect the official's real estate interests in a way that differs significantly from the way in which the change would affect the real estate interests of others or (2) if there are only a relative handful of affected interests so that the board member's interest is significant compared to the number and nature of other interests affected.

#### Permits, licenses, applications, etc.

[9] With respect to quasi-judicial decisions such as zoning petitions, the potential conflict between the village board member's financial interests and the responsibilities of office might be pronounced, particularly with respect to competitors. A village board member should not act in a quasi-judicial capacity with respect to either his or her own real estate interests or with respect to competing real estate interests.<sup>4</sup>

#### Advice

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<sup>2</sup> 11 Op. Eth. Bd. 9, 10 (1989); 10 Op. Eth. Bd. 13 (1988); 8 Op. Eth. Bd. 38 (1985), 22 (1984); 5 Op. Eth. Bd. 90 (1982), 67, 61 (1981); 4 Op. Eth. Bd. 104 (1981).

<sup>3</sup> 8 Op. Eth. Bd. 38 (1985).

<sup>4</sup> 8 Op. Eth. Bd. 33 (1985).

[10] The Ethics Board recommends that a village board member not participate in official discussions, deliberations and votes with respect to legislation (that is, ordinances and the like) affecting his or her real estate interests except to the extent that the action affects a whole class of similarly situated interests, the board member's interest is insignificant when compared to all affected interests, and the action's effect on the board member's private interests is neither significantly greater nor less than upon other interests affected by the act.

[11] The village board member ought not to participate in quasi-judicial deliberations or decision-making such as actions on permits, licenses, rezoning of specific parcels, and the like affecting the member's interests or competing real estate interests.

[12] In those instances in which the member should refrain from votes, the member should also refrain from discussion and deliberations and ask that the minutes reflect that the member has withdrawn.