

**1993 Wis Eth Bd 8**

**LOCAL CODE -- MEALS, LODGING, TRAVEL AND ENTERTAINMENT**

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A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm. OEB 93-8 (November 3, 1993)

Facts

- [1] This opinion is based upon these understandings:
- a. You write on behalf of a law firm that represents a number of local governmental units.
  - b. Each year a statewide association whose membership comprises officials of the local governmental units holds a convention attended by local public officials.

Questions

- [2] The Ethics Board understands your questions to be:
1. To what extent, if at all, does the Code of Ethics for Local Officials restrict vendors' sponsoring of hospitality suites offering food and drink without charge to local public officials attending the convention?
  2. To what extent, if at all, does the Code of Ethics for Local Officials restrict vendors' sponsoring or offering a dinner to local public officials in connection with the convention?

Discussion

[3] Although the statutory provisions that are pertinent to discussion of your questions are clear, their application to any given situation will be dependent on specific facts and circumstances. Your questions are broad in nature. In this circumstance, the Ethics Board can provide general guidance as to what the law means, but cannot provide advice on every situation that could arise.

[4] Section 19.59, *Wisconsin Statutes*, establishes a code of ethics for local government officials. The elected officials of the local governmental units your firm represents are covered by this code. See §19.42(7u), (7w), (7x), *Wisconsin Statutes*.<sup>1</sup> Section 19.59 contains two provisions pertinent to the questions you have asked. Section 19.59(1)(a), *Wisconsin Statutes*, provides:

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<sup>1</sup> Section 19.42(7u), (7w), and (7x) provide:

**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.

[5] 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.

Section 19.59(1)(a) 's prohibitions apply only to local officials. Section 19.59(1)(b) 's prohibitions apply both to local officials as well as to any persons offering or providing items to an official.

[6] Hospitality suites and dinners underwritten by non-vendors

For twelve or more years the Ethics Board has found, and so advised, that the term "substantial value" means anything of more than inconsequential or token value.<sup>2</sup> Free beer, wine, liquor, buffets, and the like clearly have more than token value.

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**19.42(7u)** "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

**(7w)** "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

(b) A county administrator or administrative coordinator or a city or village manager.

(c) An appointive office or position of a local government in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

**(7x)** "Local public official" means an individual holding a local public office.

<sup>2</sup> See, e.g., 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982), 73, 58 (1981).

Normally, a Wisconsin public official who is attending a conference at the behest of his or her governmental unit may, consistent with statutes administered by the Ethics Board, accept meals, refreshment, and the like that are provided, sponsored, or sanctioned by the event's organizer and authorized by the chief executive or governing body of the unit of government of which the official is a part.<sup>3</sup> When a governmental unit authorizes an official's attendance at a conference, it is usually fair to presume that the official's attendance is in furtherance of a public purpose or benefit and that the local government contemplates that the official will partake fully of all the conference has to offer, including forums and receptions that are sponsored or sanctioned by the organization putting on the conference and that are intended for and conducive to discussion of issues and activities pertinent to the conference's purposes. These types of incidental events often are an integral part of the educational and learning experience that comes from attending a conference by affording an opportunity for the informal exchange of ideas among officials.

In contrast, the presumption of a public purpose or benefit does not exist with respect to social events that are not provided, sponsored, or sanctioned by the conference organizer and not authorized by the official's local governmental unit. Indeed, food and drink offered at such events appear generally to be primarily of private benefit to the official and should not be accepted.

[7] Hospitality suites and dinners sponsored by vendors

Although the above analysis is generally applicable, an additional concern arises in the circumstances you have described because your law firm is a vendor of legal services to local governmental units.<sup>4</sup> As a result, §19.59(1)(b), which prohibits an official from accepting anything of value if it could be reasonably expected to influence an official's vote, actions, or judgment, also is pertinent. We note that it is likely that a vendor is willing to pay for an event like a hospitality suite or dinner specifically in order to influence official judgment in purchasing decisions by creating good will and thus enhance business opportunities. We do not possess enough facts to offer a concrete opinion as to how this provision might apply in a particular case. Important factors to consider include the cost of the event, whether the vendor is currently seeking business from the official's local unit of government and the official's decision-making role in awarding bids to the vendor.<sup>5</sup>

On the whole, if a significant number of officials attending an event are responsible for making or approving purchasing decisions that could involve the vendor's goods, we advise that a vendor not sponsor an event associated

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<sup>3</sup> See Ethics Board Guideline Eth 222. See also 1992 Wis Eth Bd 17; 1992 Wis Eth Bd 09.

<sup>4</sup> Because your letter asks about local, and not state, officials, the lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, does not come into play.

<sup>5</sup> See 1992 Wis Eth Bd 31.

with a convention even if the event is sanctioned by the convention. In any event, an individual official should not accept food and drink of exceptional value from a vendor if the official is in a position to influence the purchase of goods or services from the vendor.

#### Advice

[8] The Ethics Board advises that a law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm.