
1996 Wis Eth Bd 1
LOBBYING AND LOBBYISTS

With respect to a legislator whose company has already entered into a contract with a lobbying organization:

(1) The better course would have been that the company not have entered into the contract;

(2) In the future, the legislator should not simultaneously serve in the Legislature and enter into a financial relationship with a business or organization that pays lobbyists to try to influence state government; and

(3) Although public policy normally favors a legislator's voting on all matters properly addressed by the Legislature, for the remainder of the legislative session the legislator should not participate in discussions or votes on proposals that would specifically affect the lobbying organization.

OEB 96-1 (February 22, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are a member of the Legislature.
- b. You own a company that produces a show designed to sell certain products.
- c. Your company, through one of its employees, and independent of you, solicited a lobbying organization to participate in the show.
- d. The lobbying organization has contracted to pay your company a substantial sum in exchange for several expensive products, advertising in your company's magazine, booth space, and promotional consideration.

Question

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

Do laws administered by the Ethics Board impose any restrictions on this business arrangement?

Discussion

[3] Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*, is pertinent to your question. Reduced to its elements, that section provides:

No lobbying principal
May furnish
Anything of pecuniary value
To an elective state official, and

An elective state official
May not accept
Anything of pecuniary value
From a lobbying principal.¹

¹ Section 13.625, *Wisconsin Statutes*, provides, in relevant part:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

(3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (4), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state

[4] The organization is a registered lobbying principal in the State of Wisconsin. You are an elected state official. The payment of \$88,900, called for in the contract, is something of pecuniary value that the organization is furnishing to your company. This is so even though your company may be furnishing consideration of equal value to the organization. In this regard, the Attorney General has said that the lobbying law's restriction applies equally to situations in which items or services are bought and sold between a lobbying principal and an elective state official for fair consideration, as well as instances in which a principal gives items or services for free to an official. 80 Op. Att'y Gen. 205 (1992); 77 Op. Att'y Gen. 160 (1988) (receipt of compensation from a principal in exchange for services rendered is barred by the lobbying law).²

[5] The only remaining question is whether, by furnishing money to your company, the organization is furnishing that money to you. You have indicated that you own 100% of your company's stock. In this circumstance, the lobbying law's prohibition applies to the transaction about which you have asked. The company is, in essence, your corporate alter ego and you are the ultimate and direct beneficiary of the company's transactions. The Ethics Board must look at the reality of the situation. We have consistently stated that the lobbying law prohibits a principal from doing indirectly that which it is prohibited from doing directly.³ The Attorney General has stated, in a context similar to that presented by your question, that:

office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).

Based on the facts available to us, the Board cannot conclude that the business transaction about which you have asked is of a type that the organization makes available to the general public and is, thus, exempted under §13.625(2). It appears to be a unique promotional opportunity, as opposed to generalized mass advertising or promotion. Moreover, it is a business transaction specifically solicited by your company; not a response by your company to a bid or request made by the organization for all to respond to.

² See also, e.g., 1991 Wis Eth Bd 3. As the Ethics Board has said in the past, the law's apparent purpose is to draw a clear line barring private economic transactions between (1) state officials and lobbyists, and (2) businesses and organizations that pay lobbyists to influence those same officials. Thus, the Board has advised that an elected official should not participate in an investment opportunity by purchasing stock offered by a lobbyist (1991 Wis Eth Bd 3); should not sell stock in a closely held corporation to a lobbyist (1992 Wis Eth Bd 5); and should not provide professional services to a principal or accept any compensation related to services provided by the official's employer to a principal (1992 Wis Eth Bd 26).

³ See, e.g., 1993 Wis Eth Bd 4; 1992 Wis Eth Bd 2; 1992 Wis Eth Bd 27; 1991 Wis Eth Bd 8.

The question of whether a lobbyist who is furnishing something of pecuniary value to an official's employer, relative or corporation is actually furnishing the item or service to the state official will always be a question of fact. I agree . . . that the law not only prohibits a lobbyist from furnishing things of pecuniary value directly to an official, but also prohibits a lobbyist from furnishing those things indirectly if the official will receive something of pecuniary value from the transaction. Therefore, an official would not be in violation of the law if the official's employer did business with the lobbyist but the official's compensation from the company was totally unrelated to and not determined by the income derived from that business. On the other hand, if the lobbyist were purchasing products from a company which employed an official, knowing that the official's compensation from the company would be enhanced by the purchases, a violation of the law would occur. OAG 9-92 (March 23, 1992).

Thus, the lobbying law acts as a bar to the transaction you have described.⁴

Advice

[6] The Ethics Board advises:

- (1) That the better course would have been that the company had not entered into the contract with the lobbying organization;
- (2) That in future you not simultaneously serve in the Legislature and enter into a financial relationship with a business or organization that pays lobbyists to try to influence state government; and
- (3) That although public policy normally favors a legislator's voting on all matters properly addressed by the Legislature, for the remainder of the legislative session you not participate in discussions or votes on proposals that would specifically affect the lobbying organization.

⁴ The Board is aware that the transaction about which you have asked has already occurred. Because of the Board's desire to encourage state government officials to seek the Board's counsel in order to address issues in a way that will promote citizen's confidence in Wisconsin's government, in this instance, in which you have brought a matter to the Board's attention and sought the Board's advice, the Board prefers to act in a way that will address any similar situations in the future, rather than to seek redress for activities that have occurred.