
1996 Wis Eth Bd 6
LOBBYING

1. The lobbying law does not proscribe an agency official's membership on a lobbying organization's Board of Directors, or the official's participation in its affairs; and
2. The lobbying law forbids an agency official elected to a lobbying organization's board of directors to accept reimbursement from the organization for expenses incurred in attending meetings of the organization's directors because the organization does not reimburse the general public for those expenses. OEB 96-6 (April 12, 1996)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a state employee whose responsibilities include participating in rulemaking activities.
 - b. You are a member of a large organization.
 - c. The organization is registered as a lobbying principal in Wisconsin.
 - d. You have been elected to the organization's board of directors.
 - e. A member of the organization may become a candidate for election to the board of directors by filing nomination papers. Nomination papers must be signed by 10 or more members of the organization.
 - f. The candidates receiving the greatest number of votes from members eligible to vote are elected to the board of directors.
 - g. The organization reimburses directors for expenses they incur in attending the board's meetings.

Questions

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

Consistent with Wisconsin's lobbying law may you accept reimbursement from a lobbying organization for expenses you incur in attending meetings of the organization's board of directors?

Discussion

[3] Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*, reduced to its elements, provides:

No lobbying principal
May furnish
Food, meals, beverages, money or
Anything of pecuniary value
To an agency official, and

No agency official
May solicit or accept
From a lobbying principal
Anything that the principal is prohibited from furnishing.¹

¹ Section 13.625, *Wisconsin Statutes*, provides:

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 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).

[4] You have stated as a matter of fact that you are an agency official; that is, you are a state employee whose responsibilities include participation in rulemaking. As long as these activities are not limited to clerical, secretarial, or ministerial actions you are an agency official within the meaning of §13.62(3), *Wisconsin Statutes*. The organization of which you are a member is a registered lobbying principal. Food, drink, transportation and lodging, or reimbursement therefor, have pecuniary value. The organization's giving you these items is a furnishing. This is so even if the furnishing only makes you whole.² This is not the end of our inquiry because you suggest that the organization's payment of expenses incurred in connection with attendance at meetings of its board of directors is available to the general public. Section 13.625(2), *Wisconsin Statutes*, specifically provides:

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.

[5] In your letter, you have presented a number of facts that you suggest establishes that election to the lobbying organization's board of directors is something that is available to the general public. The organization's members include a large number of individuals. Eligibility for election to the board of directors is available to any member who can obtain the requisite signatures and votes from other members of the organization. State officials receive no preference either in their ability to join the organization or in standing for election to the board of directors.

[6] The lobbying law does not prohibit your holding a membership or office in the organization. The lobbying law does prohibit the organization's provision of food, lodging, and transportation to an agency official for attending board of directors' meetings. Although the organization may furnish these items to directors, the organization does not furnish food, transportation, lodging, or reimbursement to the general public who attend its meetings.³

² The Attorney General has opined that the word "furnish," as used in the lobbying law, includes both giving gratuitously as well as exchanging something for fair value, such as labor for compensation. 80 Op. Att'y Gen. 205 (1992).

³ The phrase "general public" need not be interpreted as including everyone in the world or even all residents of Wisconsin. On the other hand, something is not made available to the general public simply because the prerequisites to receiving it do not turn on state employment. Something is available to the general public only if it is accessible to the general public. See *American Mut. Liability Ins. Co. v. Fisher*, 58 Wis. 2d 299, 303, 206 N.W.2d 152 (1973).

Advice

[7] The Ethics Board advises:

- (1) the lobbying law does not proscribe your membership on a lobbying organization's board of directors, or your participation in its affairs; and
- (2) the lobbying law forbids you to accept reimbursement from the a lobbying organization for expenses you incur in attending meetings of the organization's board of directors because the organization does not reimburse the general public for those expenses.

80 Op. Att'y Gen. 205 (1992).

In contrast to the organization's provision of expenses to members of the board of directors, the organization's offer of insurance benefits, books, videos, programs and the like appear consistent with the lobbying law to the extent the organization offers them to large audiences such as the organization's membership.