
1996 Wis Eth Bd 10
LOCAL CODE - DISQUALIFICATION

A city council member who is a retired city employee and who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

A city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

A city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.
OEB 96-10 (July 31, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are a City Attorney.
- b. Two members of the city council are retired city employees who participate in the city's health insurance benefits for retired employees.
- c. The city provides health insurance to active and retired employees at no cost.
- d. The city pays, on average, \$8,777 per year for each retiree's health insurance.
- e. Neither member participates in the negotiation of health insurance contract provisions.
- f. The city council votes on health insurance contracts with specific companies as a package for all active and retired employees.

- g. The city's budget includes as a line item funding for health insurance.

Questions

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

- a. What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on the city council members' ability to participate in discussions or votes on retiree health insurance contracts?
- b. What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on the city council members' ability to participate in discussions or votes on the city's budget which contains funding for health insurance?
- c. Would the restrictions of §19.59, *Wisconsin Statutes*, apply if a city council member's child is a city employee?

Discussion

[3] Several provisions of the Code of Ethics for Local Government Officials, Employees and Candidates apply to your questions.

[4] Section 19.59(1)(a), *Wisconsin Statutes*, reduced to its elements, provides:

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.¹

¹ 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. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district

[5] Similarly, §19.59(1)(c)2, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May 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 or a member of his or her immediate family.²

[6] Finally, §19.59(1)(c)1, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May take any official action
Substantially affecting a matter
In which the official or a member of his or her immediate family
Has a substantial financial interest.³

[7] A member of a city council is a local public official subject to §19.59.⁴ Participating as a member of a city council in discussions, deliberations, or votes on an issue before the council is a use of office. *See, e.g.*, 1992 Wis Eth Bd 22. The terms of a health insurance contract can be something of sub-

board of a local professional baseball park district created under subch. III of ch. 229. 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.

² Section 19.59(1)(C)2., *Wisconsin Statutes*, provides:

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

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.

³ Section 19.59(1)(c)1., *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.

⁴ Under §19.42(7u), (7w), and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective city office.

stantial value and a substantial benefit to the insured.⁵ In the situation about which you have asked, a city council member's private interest in the health insurance contract may directly conflict with the interest of the public whom the official serves. Therefore, the statute requires that the city council members who are retired city employees not participate in consideration of the terms or award of such contracts.

[8] Moreover, if a member of a city council member's immediate family is a participant in the city's health insurance program, that city council member is also subject to the same restrictions. A child is defined as a member of an official's immediate family if the child receives more than one-half of his or her support from the official or if the official receives more than one-half of his or her support from the child. §19.42(7), *Wisconsin Statutes*.

[9] Finally, in our view, §19.59 would not restrict a city council member's voting on the city's budget as a whole as long as (1) the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance and (2) any personal benefit that may result from a vote on the entire budget is indirect and attenuated. As a representative of the people, an individual holding a legislative office has an obligation to consider and vote on issues before the legislative body. Therefore, voting on a governmental budget, only one small part of which may directly have a financial effect on an official, should not, we believe, be viewed as an improper use of office.

Advice

[10] The Ethics Board advises:

(1) That a city council member who is a retired city employee, who receives health insurance paid for by the city, should not participate in consideration of the terms or award of such contracts.

⁵ Section 19.59(1)(d), *Wisconsin Statutes*, is inapplicable. That section provides:

19.59(1)(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.

First, this exception applies only to §19.59(1)(c) and does not affect the restrictions of §19.59(1)(a). Second, the exception applies to the *payment* of salaries and employee benefits, not to setting the level of those benefits.

(2) That a city council member whose child participates in the city's health insurance program, and who either provides more than one-half of the official's support or receives more than one-half of his or her support from the official, should not participate in consideration the terms or award of such contracts.

(3) That a city council member, disqualified from voting on the health insurance contracts themselves may nevertheless vote on the city's budget as a whole as long as the member's personal stake in the budget is indirect and attenuated and the member does not participate in discussions or votes on any amendment to the budget affecting such member's health insurance.

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