
1996 Wis Eth Bd 17
LOBBYING

An association is a lobbying principal subject to Wisconsin's lobbying law if (1) it reimburses a member for lost wages in connection with lobbying on the association's behalf and (2) the member communicates with state officials other than the legislators from the member's own district, on more than 4 days in a 6-month reporting period.

A lobbying principal may not, consistent with the lobbying law, reimburse its members' campaign contributions that are furnished at a time not permitted to the principal. (February 25, 1997)

Facts

[1] This opinion is based upon these understandings:

- a. You write on behalf of a labor union (the "Association") of which you are president.
- b. The Association wants to help its members to meet with legislators to present workplace concerns that cannot be addressed through collective bargaining.

Questions

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

1. Under what circumstances must an organization register with the Ethics Board as a principal?
2. How, if at all, would a practice of the Association's paying travel expenses and lost wages to its members in connection with the members attempting to influence legislative action be relevant to the lobbying registration laws?
3. Do the lobbying laws prohibit the Association's discussing any subject with a legislator?
4. How do Wisconsin's lobbying laws relate to a lobbying principal's reimbursing an individual for attending a political fundraiser either (1) for an individual campaign committee of a

- partisan state official or of a candidate for election to a partisan office or (2) otherwise?
5. What is the nature of reports a lobbying principal must file with the Ethics Board?
 6. Do the lobbying laws place a monetary limit on the Association's payment of expenses or contributions the Association might make in connection with a political fund raiser?
 7. Are there any considerations with respect to lobbying of which the Association ought to be mindful in order to preserve its status as a non-profit organization?

Discussion

Registration required?

[3] Wisconsin's lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, requires every organization that meets the definition of a lobbying principal to register with the Ethics Board and to file with the Board a document identifying the individuals the organization has authorized to lobby on its behalf. Each lobbyist must obtain a license.¹ The key to determining if an organization is a lobbying principal is whether it employs a lobbyist.² A lobbyist, in turn, is defined as an individual who is paid to influence legislation or administrative rulemaking. Section 13.62(11) provides:

¹ See §§13.63, 13.64, 13.65, and 13.66, *Wisconsin Statutes*.

² Section 13.62(12), *Wisconsin Statutes*, provides:

13.62(12) "Principal" means any person who employs a lobbyist. If an association, corporation, limited liability company or partnership engages a lobbyist, an officer, employe, member, shareholder or partner of the association, corporation, limited liability company or partnership shall not be considered a principal.

“Lobbyist” means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual’s duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period.

[4] This means that the Association must register as a principal if it employs, or pays, any individual to lobby on its behalf. Reimbursement of an individual’s expenses does not by itself make the individual a lobbyist. We understand “expenses” to mean the out-of-pocket costs of travel, supplies, and the like that are associated with lobbying. If the Association makes a payment to an individual to compensate that individual for lost wages, that is something more than a reimbursement of expenses.

[5] Even if the Association pays an individual for lobbying, that individual does not become a lobbyist, and the Association does not become a lobbying principal, if the individual communicates only with his or her own senator and representative,³ or if the individual makes a lobbying communication on no more than 4 days in a six-month reporting period, regardless of the number of legislators with whom the individual communicates.⁴

Reporting requirements

[6] If your Association does become a lobbying principal, then it is subject to the lobbying law’s reporting requirements, found in §13.68, *Wisconsin Statutes*. Generally speaking, this section requires every lobbying

³ Section 13.621(6), *Wisconsin Statutes*, provides:

13.621(6) Individual right to lobby. Nothing in ss. 13.61 to 13.695 may be applied to or interfere with the right of any individual to engage in lobbying:

(a) Solely on his or her own behalf; or

(b) By communicating solely with a legislator who represents the senate or assembly district in which the individual resides, whether or not such communication is made on behalf of the individual or on behalf of another person.

⁴ Section 13.62(10g), *Wisconsin Statutes*, provides:

13.62(10g) “Lobbying communication” means an oral or written communication with any agency official, elective state official or legislative employe that attempts to influence legislative or administrative action, unless exempted under s.13.621.

principal to report every six months the costs of, and time spent on, lobbying.

Reimbursement for fund-raisers

[7] If the Association becomes a lobbying principal, it will also be subject to the prohibited practices provisions of the lobbying law, found in §13.625, *Wisconsin Statutes*. That section provides, with limited exceptions, that no lobbying principal may furnish anything of pecuniary value to certain state officials. The Association may, however, furnish campaign contributions, except that it may furnish a campaign contribution to a partisan elected state official or candidate for partisan elective state office only between June 1 and the day of the general election in the year of a candidate's election and, to a candidate for the legislature during that time period, only if the legislature has concluded its final floorperiod and is not in special or extraordinary session.⁵

⁵ Section 13.625(1) and (2), *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).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature concluded its final floorperiod, and is not in special or extraordinary session.

2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

* * *

(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.

[8] A lobbying principal may not furnish indirectly that which it is prohibited from furnishing directly. 1992 Wis Eth Bd 29; 1992 Wis Eth Bd 27. Thus, the Association may not reimburse a member's campaign contribution that the Association would be prohibited from furnishing. Moreover, the campaign finance law, administered by the Elections Board, prohibits furnishing funds to another for the purpose of making a contribution in other than the furnisher's own name. Section 11.24, *Wisconsin Statutes*.

Restrictions on subject matter

[9] The lobbying law does not limit the content of any lobbying communication.⁶

Nonprofit organizations

[10] The lobbying law does not treat nonprofit organizations differently from other types of principals. However, it is our understanding that an organization's lobbying activities may be relevant to determining its federal tax status. For information about this you should consult your tax advisor.

Advice

The Ethics Board advises:

The lobbying law's timing restriction does not apply to campaign contributions furnished to a political committee other than the personal campaign committee of a candidate for partisan state office or a partisan elected state official.

⁶ Because your Association comprises state employees, you should be aware of §13.695(3), *Wisconsin Statutes*. That section provides:

13.695(3) Any officer or employe of an agency who attempts to influence legislative action which affects the financial interests of such employe, other than a regular or periodic adjustment in salary, wages or other benefits paid by the state, shall disclose the nature of such interest to any member or employe of the legislature with whom such person has a direct communication concerning such legislation.

[11] An association is a lobbying principal subject to Wisconsin's lobbying law if (1) it reimburses a member for lost wages in connection with lobbying on the association's behalf and (2) the member communicates with state officials other than the legislators from the member's own district, on more than 4 days in a 6-month reporting period.

[12] The association should not reimburse its members' campaign contributions.