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**1997 Wis Eth Bd 8**  
**LOBBYING LAW**

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The Ethics Board advises that, consistent with the lobbying law:

(1) a legislator may direct a letter to a lobbyist asking the lobbyist to ask others to endorse the legislator's candidacy or to provide volunteer personal services to the legislator's campaign such as erecting yard signs, delivering campaign literature, and stuffing envelopes (but not business or professional services); and

(2) a legislator not direct a letter to a lobbyist asking the lobbyist to ask others to make a campaign contribution to the legislator's campaign, except between June 1 and the day of the general election in the year of the election and then, if the legislator is running for reelection to the legislature, only if the legislature has concluded its final floorperiod and is not in special or extraordinary session. (September 5, 1997)

Facts

¶1. This opinion is based upon these understandings:

- a. You are a member of the Legislature.
- b. You are planning an event for the solicitation of money for your personal campaign committee.
- c. You would like to send a letter to lobbyists (1) informing them of the event, (2) stating that you are not asking for a political contribution from them, and (3) indicating that if any of the lobbyists' clients would like to become a host for the event, the lobbyists should have their clients contact you.

Questions

¶2. The Ethics Board understands your questions to be:

Do laws administered by the Ethics Board restrict your sending lobbyists the letter you have outlined?

### Discussion

¶3. Wisconsin's lobbying law is pertinent to your question. Reduced to its elements, §13.625(3), *Wisconsin Statutes*, provides:

No partisan elective state official  
May solicit or accept  
Anything of pecuniary value  
From a lobbyist or principal  
Except a campaign contribution  
In the year of the individual's election between June 1 and the day of  
the general election  
Provided, in the case of a legislator, the legislature has concluded its  
final floorperiod and is not in special or extraordinary session.<sup>1</sup>

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<sup>1</sup> Sections 13.625(1)(b) and (c), (2), and (3), *Wisconsin Statutes*, provide:

**13.625 Prohibited practices. (1) No lobbyist may:**

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(b) Furnish to any agency official or legislative employee of the state or to any elective state official or candidate for an elective state office, or to the official's, employee'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.

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Section 13.625(3) also prohibits an official's personal campaign committee from accepting campaign contributions from lobbyists except during permitted times. But the statute does not prohibit a personal campaign committee from soliciting contributions from a lobbyist at any time.

¶4. As a member of the legislature, you are a partisan elected state official.<sup>2</sup> The two issues that your question raises are (1) does the proposed letter solicit lobbyists; and (2) if so, does it solicit campaign contributions or something else of pecuniary value from lobbyists.

#### *Solicitation*

¶5. As we understand it, you will address your letter to lobbyists and will state that if a lobbyist's client is interested in hosting your fundraising event, the lobbyist should have the client contact you. "Solicit" means "to make solicitation or petition for something desired," *American Heritage Dictionary* (3d ed. 1992); "to seek to influence or incite to action," "to make a petition or request," *Random House Dictionary of the English Language* (2d ed. Unabridged 1987); "to approach with a request or plea," *Webster's Third New International Dictionary* (1981).

¶6. The statute does not cover only an explicit request. Rather, one must look at the totality of the circumstances to determine whether, by written or oral communication, or other conduct, a request is being made. We agree with the United States Supreme Court which said, in a case interpreting the meaning of a federal statute using the phrase "solicitation of orders for interstate sales,"

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(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 employee of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted . . . . 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 . . . .

<sup>2</sup> Section 13.62(11p), *Wisconsin Statutes*, provides:

**13.62(11p)** "Partisan elective state office" means the office of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state senator or state representative to the assembly.

We think it evident that in this statute the term includes, not just explicit verbal requests for orders, but also any speech or conduct that implicitly invites an order. Thus, for example, a salesman who extols the virtue of his company's product to the retailer of a competitor's brand is engaged in "solicitation" even if he does not come right out and ask the retailer to buy some.

*Wisconsin Dept. of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 223 (1992). Here, your proposed letter both conveys information about your fundraiser and states that if a lobbyist's client is interested in hosting it, it should contact you. Implicit in this is an invitation to the recipient of the letter to respond by conveying the information about the event to his or her client and asking whether the client will host your planned fundraising event.

*Campaign contribution or anything of pecuniary value*

¶7. The next question is whether the letter you propose to send solicits campaign contributions from lobbyists. We believe that it does. Although the letter will say that you are not seeking a financial contribution from lobbyists, it seeks to enlist lobbyists to procure contributions from others on your behalf. The language of the lobbying law does not distinguish between your soliciting a lobbyist to furnish something to you directly and soliciting a lobbyist to ask another to furnish something to you. *Cf.* 1996 Wis Eth Bd 5 [7] ("furnishing" includes physically furnishing another's contribution). Although you have not described what it would mean to "host" your proposed fundraiser, we understand that a host could provide (1) a contribution of money, (2) an endorsement, (3) services in connection with holding the fundraiser, or some combination of these elements. The lobbying law explicitly restricts the times during which a lobbyist or principal may furnish you a campaign contribution. Thus, you may not solicit a lobbyist either to make a campaign contribution to you, or to help procure campaign contributions for you, except between June 1 and the day of the general election in the year of your election and then, if you are running for reelection to the legislature, only if the legislature has concluded its final floorperiod and is not in special or extraordinary session.<sup>3</sup>

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<sup>3</sup> Although the lobbying law provides a "window" during which you may solicit a lobbyist to make a campaign contribution, it does not permit you to solicit anything else of pecuniary value from a lobbyist at any time. The next question then is whether the letter you propose to send solicits a service of pecuniary value from lobbyists. "Pecuniary" means "consisting of or pertaining to money," *The American Heritage Dictionary* (1991); "consisting of or measured in money," *Webster's Ninth New Collegiate Dictionary* (1983). See also §946.84(4)(a), *Wisconsin Statutes* ("pecuniary value" means "anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage").

¶8. Finally, the lobbying law does not hinder your requesting a lobbyist to ask others to endorse your candidacy or to ask others to provide volunteer time to assist in the event. A lobbyist may, without restriction from the lobbying law, individually endorse a legislative candidate, because an endorsement, while valuable, does not have pecuniary value. A lobbyist also may, without restriction from the lobbying law, provide volunteer campaign services to a candidate.<sup>4</sup> You may, consistent with the lobbying law, solicit a lobbyist for his or her endorsement and for his or her volunteer services.

### Advice

¶9 The Ethics Board advises that, consistent with the lobbying law:

(1) you may direct a letter to a lobbyist asking the lobbyist to ask others to endorse your candidacy or to provide volunteer personal services to your campaign such as erecting yard signs, delivering campaign literature, and stuffing envelopes (but not business or professional services); and

(2) you not direct a letter to a lobbyist asking the lobbyist to ask others to make a campaign contribution to your campaign, except between June 1 and the day of the general election in the year of your election and then, if you are running for reelection to the legislature, only if the legislature has concluded its final floorperiod and is not in special or extraordinary session.

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In prior opinions, the Ethics Board has distinguished between a lobbyist's independent activity to urge others to furnish a campaign contribution to a candidate and a lobbyist's obtaining contributions from others acting in concert with a candidate. The Board has said that a principal's or a lobbyist's advising others to make a campaign contribution to a candidate for state office is not a furnishing by the principal or lobbyist of a contribution or anything else of pecuniary value to the candidate, "as long as it is done independently of a candidate." 1996 Wis Eth Bd 5 [6]; 1992 Wis Eth Bd 30 [4]. Communicating with a principal's members to urge them to contribute to a candidate, "while valuable, is not a furnishing to an official as long as it is independently done. In contrast, if the [communication] is undertaken in consultation with, or at the request of, the legislator, then it would be a furnishing of a service of pecuniary value." 1992 Wis Eth Bd 30 [4]. We continue to adhere to this view to the extent that a lobbyist or principal is acting in concert with a candidate to provide material resources, in lieu of the candidate's, to inform others of a candidate's fundraising event. However, absent such facts, we do not believe that a lobbyist's or principal's advising others to contribute to a candidate, while valuable, can be said to have "pecuniary" value.

<sup>4</sup> See *Barker v. State of Wisconsin Ethics Board*, 93-C-150-C (W.D. Wis.) (Opinion and Order, December 13, 1993) ("§13.625 is unconstitutional insofar as it prohibits lobbyists from volunteering personal services to political campaigns, because it is not closely drawn to avoid unnecessary abridgment of associational freedoms.").

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