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**1997 Wis Eth Bd 13**  
**GIFTS; IMPROPER USE OF OFFICE; LOBBYING AND LOBBYISTS**

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The Ethics Board advises:

A legislator should not accept a lobbying principal's offer of a commercial quantity of informational brochures. (October 8, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
- a. You are a member of the legislature.
  - b. An association that is a registered lobbying principal in Wisconsin has sent you an informational brochure that it produces.
  - d. The association has offered to furnish you additional copies of the brochure.
  - e. The brochure is also distributed by a state agency, and individuals who call the association may obtain additional copies.

Questions

- ¶ 2. The Ethics Board understands your question to be:

Consistent with statutes administered by the Ethics Board, may you accept copies of the brochure, place an identifying sticker on each copy, and distribute them to constituents?

Discussion

- ¶ 3. Your question requires consideration of both the Ethics Code and lobbying law.

*Ethics Code*

First, §19.45(2), *Wisconsin Statutes*, provides:

No state public official  
May use his or her public position or office  
To obtain financial gain or anything of substantial value  
For the official's private benefit.<sup>1</sup>

¶ 4. You are a state public official.<sup>2</sup> The association appears to be offering you its brochures because of your position as a legislator. Thus, your accepting the offer is a use of your office.<sup>3</sup> See, e.g., 9 Op. Eth. Bd. 17, 18 (1986). The next question is whether the brochures have substantial value. The Ethics Code defines "anything of value" to include "property, favor, [or] service."<sup>4</sup> The offer of the brochure to legislators appears to be a favor and the brochures themselves are property. The Ethics Board has said that the word "substantial" is contrasted with "nominal value" and may be synonymous with "merchantable value." 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981). Although an individual brochure does not appear to have substantial value, the brochures in wholesale or commercial quantities would.

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<sup>1</sup> Section 19.45(2), *Wisconsin Statutes*, provides:

**19.45 (2)** No state 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. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

<sup>2</sup> Section 19.42(13)(c), *Wisconsin Statutes*, defines "state public office" to include "All positions identified under s. 20.923(2), (4), (4m), (6)(f) to (h) and (8) to (10), except clerical positions." Legislators are identified in §20.923(2), *Wisconsin Statutes*.

<sup>3</sup> Although the brochures may be available in quantity to anyone who asks, you have received specific notice of their availability that others have not. As a practical matter, the public is not aware of the availability of the brochures in quantity. See 7 Op. Eth. Bd. 33 (1984) (not use of office if offer is extended to others in addition to legislators in a way that does not, as a practical matter, limit the offer's beneficiaries to public officials).

<sup>4</sup> Section 19.42(1), *Wisconsin Statutes*, provides:

**19.42 Definitions.** In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

¶ 5. The remaining question is whether the brochures are for your private benefit. The Ethics Board has said that even if acceptance of an item or service is of private benefit to a state official, the official may still accept an item or service if the public, rather than the official, is the primary beneficiary. 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982). There appear to be three beneficiaries if you accept and distribute the brochures – you, the association, and the recipients. Your ability to give to constituents a brochure that contains useful information, to which you can affix your name, address, and phone number, benefits you personally to the extent it permits you to provide a useful item to constituents and build goodwill that may aid in your reelection effort. The association benefits from the wider distribution of its advertising. Members of the public who receive the brochure benefit from having the information in the brochure.

¶ 6. In 1985, the Ethics Board weighed these factors in addressing the question whether legislators could affix identifying information to highway maps given to legislators by the Department of Transportation for distribution to the public. We said:

The Ethics Code will not be an obstacle to a legislator's affixing or causing legislative employees to affix to highway maps of Wisconsin information that furthers a public purpose including information that informs the maps' recipients of the name and mailing address of the legislator elected from the recipient's legislative district and the telephone numbers by which they may call state officials toll free to express their concerns about the state's actions and their support for or opposition to proposals pending before the legislature. The greater the label's content of public information and the further the distribution from a campaign at which the distributor will stand for election, the more clearly it fulfills a public purpose. In this instance, the action about which you have asked is consistent with the Ethics Code.

8 Op. Eth. Bd. 49, 51 (1985).

¶ 7. The same considerations apply to your question, and we reach the same conclusion under the Ethics Code.

*Lobbying law*

¶ 8. Next, we must consider Wisconsin's lobbying law. Section 13.625, *Wisconsin Statutes*, reduced to its elements, provides:

No lobbying principal  
May furnish  
To an elected state official

Anything of pecuniary value  
And no elected state official  
May solicit or accept  
Anything of pecuniary value  
From a principal.<sup>5</sup>

¶ 9. You are an elected state official. The association is a registered lobbying principal in Wisconsin. Although an individual brochure may not have pecuniary value, brochures in commercial or wholesale quantity would. "Pecuniary" means "consisting of or pertaining to money" or "requiring the payment of money."<sup>6</sup> If not made available to you, you would have to pay a printer to reproduce the information contained in the brochures.

¶ 10. We must next examine two exceptions contained in the lobbying law. First, §13.625(6t), *Wisconsin Statutes*, provides that the lobbying law's restriction does not apply to the furnishing or acceptance of educational or informational material.<sup>7</sup> The exception applies to material for your

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<sup>5</sup> Sections 13.625(1)(b), (2), and (3), *Wisconsin Statutes*, provide:

**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 . . . . 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>6</sup> *The American Heritage Dictionary* (1991).

<sup>7</sup> Section 13.625(6t), *Wisconsin Statutes*, provides:

**13.625(6t)** Subsections (1)(b), (2) and (3) do not apply to the furnishing of educational or informational material by a lobbyist or principal to an elected state official, legisla-

education and information. Implicit in Wisconsin's lobbying law is the concept that the lobbying law will not be applied to impede the free flow of information to the state of Wisconsin's policy-makers. It is consistent with the lobbying law that the association furnish you and that you accept a copy of the association's brochure. The exception does not, however, authorize the association to furnish you or for you to acquire from a lobbying principal commercial quantities of publications for your distribution. Once the association has provided you with information, it conveys no further information by supplying dozens or hundreds of the brochures.

¶ 11. Second, §13.625(2), *Wisconsin Statutes*, by its terms does not apply to items also made available to the general public. In interpreting the meaning of that phrase, the Attorney General has said:

[S]omething is available to the general public if:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are: (a) established and readily identifiable; and (b) drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employe or elective state official; and
3. There is no offer or notice of availability directed to an agency official, legislative employe or elective state official with the effect of conferring an advantage not also given others who meet the criteria.<sup>8</sup>

80 Op. Att'y Gen. 205, 212-13 (1992).

¶ 12. Here, although individuals who call the association may obtain copies of the brochure, we are aware of no effort that has been made to notify the

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tive official or agency official, or acceptance thereof by an elected state official, legislative official or agency official.

<sup>8</sup> Section 13.625(2) which establishes an exception for items "available to the general public" and §19.56(3)(b) which establishes an exception for a payment that "is unrelated to and did not arise from the recipient's holding a public office" may often have a similar or identical effect even though the latter exception is both narrower and places upon the recipient the burden of demonstrating that the exception is met.

public of the brochures' availability. In contrast, the association has sent legislators specific notice that they may obtain additional copies.<sup>9</sup>

Advice

¶ 13. The Ethics Board advises:

You should not accept the association's offer of a commercial quantity of informational brochures.

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<sup>9</sup> You should also be aware of chapters 11 and 12, *Wisconsin Statutes*, relating to campaign finance and elections. For example, §11.33, *Wisconsin Statutes*, could be read to prohibit your distributing more than fifty brochures after nomination papers for the legislature may be circulated if you have put identifying labels on the brochures that have been paid for from your office account.