
1997 Wis Eth Bd 16
MEALS, LODGING, TRAVEL AND ENTERTAINMENT;
LOBBYING AND LOBBYISTS

The Ethics Board advises that:

- (1) Both state and local officials may participate in a round-trip train excursion that celebrates a lobbying organization's 10th anniversary;
- (2) The lobbying organization should not furnish refreshments to elected state officials or to state agency officials whose responsibilities relate to rule-making; and
- (3) Local public officials and non-elected state officials whose responsibilities do not involve state rule-making may pay for and partake of the food and drink that is offered in connection with the proposed event. The official should pay the greater of [i] the established charge to others for the refreshments, [ii] the organization's cost of providing the refreshments, or [iii] the fair market value of the recipient's independently acquiring like items at a comparable event. (October 9, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
- a. You write on behalf of an organization that is a registered lobbying principal in Wisconsin.
 - b. The organization is planning an event to celebrate its tenth anniversary.
 - c. The event will include a round-trip train excursion.
 - d. The organization will offer refreshments during the train ride.
 - e. The organization plans to invite both elected and appointed state officials as well as local officials.

Questions

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

By inviting state and local government officials to be its guests on a train ride celebrating its tenth anniversary and indicating that the officials may elect either to pay \$10 to cover the cost of refreshments served en route or not to partake of refreshments, has the organization acted in accordance with statutes the Ethics Board administers?

Discussion

¶ 3. The answer to your question is governed by three statutes §13.625, *Wisconsin Statutes*, part of Wisconsin's lobbying law,¹ §19.45(3m), *Wisconsin Statutes*, part of Wisconsin's ethics code for public officials,² and §19.59, *Wisconsin Statutes*, part of Wisconsin's ethics code for local government officials.³

¹ Section 13.625(1)(b) and (2), *Wisconsin Statutes*, provide:

13.625 Prohibited practices. (1) No lobbyist may:

(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).

(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.

² Section 19.45(3m), *Wisconsin Statutes*, provides:

19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

³ Section 19.59(1)(a), *Wisconsin Statutes*, provides:

19.59(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

FOOD AND DRINK

¶ 4. *Elected state officials and state agency officials*

The organization ought not to furnish refreshments to elected state officials or to state agency officials whose responsibilities relate to state rule-making. The lobbying law prohibits an organization that employs a lobbyist, such as your organization, from furnishing food, drink, or anything else of pecuniary value to “any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office.”⁴ Section 13.625 makes no allowance for a lobbying principal’s furnishing items of pecuniary value to an elective state official or to an official with responsibilities for administrative rules even if the official furnishes something of equal value in return.⁵

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 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.

⁴ An “agency official” means “a member, officer, employe or consultant of any agency who as part of such person’s official responsibilities participates in any administrative action in other than a solely clerical, secretarial or ministerial capacity.” §13.62(3), *Wisconsin Statutes*. “Administrative action” means “the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227.” §13.62(1), *Wisconsin Statutes*.

⁵ 80 Op. Att’y Gen. 205 (1992); 1996 Wis Eth Bd 7 ¶4; 1996 Wis Eth Bd 1 ¶4; 1992 Wis Eth Bd 5 ¶4; 1991 Wis Eth Bd 3 ¶6. The Attorney General has spoken to this very issue and his response is unequivocal:

[There] is persuasive evidence that the Legislature wanted to prohibit the furnishing of a thing of pecuniary value even if something of pecuniary value was furnished in return.

* * *

As you note in your request, if the statute were interpreted as permitting the acceptance of items in exchange for fair value, the Ethics Board would need to determine the fair market value of goods or services exchanged. . . . The potential for abuse inherent in that interpretation is obviated by giving the statute its common and ordinary interpretation. I conclude, therefore, that the prohibition on furnishing things of pecuniary value also prohibits the sale of such things to or purchase of such things from state officials.

80 Op. Att’y Gen. 205 (1992).

Although the Ethics Board has been reluctant to enforce this prohibition when officials pay for food and drink at conferences, seminars and receptions intended for and conducive to

¶ 5. *Non-elected state officials whose responsibilities do not include rule-making*

Non-elected state public officials whose responsibilities do not involve state rule-making are not subject to the lobbying law.⁶ Consistent with the Ethics Code, these officials may pay for and accept the food and drink that is offered in connection with the proposed event. The provision of the Ethics Code that is most pertinent is §19.45(3m), *Wisconsin Statutes*. That section provides:

§19.45(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

¶ 6. If “accept” were synonymous with “receive”, §19.45 (3m) would be an obstacle to the organization’s plans to offer food and drink to a state public official, even if the official paid for the food and drink. But the terms are not synonymous. In interpreting the meaning of the word “accept,” the Attorney General stated:

The legislative history of section 19.45(3m) indicates that the word “accept” was intended to apply only to receiving gifts. . . . Section 19.56(1) encourages public officials to meet with groups to discuss matters before the Legislature. It would make no sense to encourage officials to attend those functions but prohibit them from purchasing refreshments at the functions.

80 Op. Att’y Gen. 201, 202-03 (1992). The Attorney General concluded that

[A] state public official may purchase items and services from an organization, other than a lobbying principal, if the opportunity to purchase the items or services is not itself something of substantial value.

Id., at 201.

¶ 7. Thus, if the organization sets and collects from each state official the greater of: [i] the established charge to others for the refreshments, [ii] the organization’s cost of acquiring the food and drink it provides, or [iii] the market price of the recipient’s independently acquiring like items, then

[discussion of state governmental policies and processes, \(See 1996 Wis Eth Bd 9, fn. *\) the event that the organization has planned does not appear to fit into this category.](#)

⁶ State public officials include, among others, individuals who hold a position to which individuals are regularly appointed by the Governor. See §19.42(13), *Wisconsin Statutes*.

§19.45 (3m) will not bar a state official's partaking of the food and drink the organization offers.

¶ 8. *Local public officials*

Consistent with the Ethics Code for Local Government Officials, local government officials may pay for and accept the food and drink that is offered in connection with the proposed event.⁷ The provision of the statutes that is most pertinent is §19.59(1)(a), *Wisconsin Statutes*. Reduced to its elements, that section provides:

No local public official
May use his or her public position or office
To obtain anything of substantial value
For private benefit⁸

¶ 9. Accepting an item or service offered to an individual because the individual holds a public position is a use of office. However, §19.59(1)(a) does not bar an official from accepting an item if the official pays the full value of the item or benefit, including the value, if any, of the opportunity to obtain the item. *See* 80 Op. Att'y Gen. 201, *supra*.

TRAIN EXCURSION

¶ 10. The event you have asked about does not include the provision of "transportation" within the meaning of the lobbying law or Ethics Code. *See* 1996 Wis Eth Bd 15, footnote; 79 Op. Att'y Gen. 137, 137-38 (1990). The event is a reception or party. It will occur on a train but does not have as its purpose or effect the transporting of passengers from one location to another.

⁷ A local public official includes, among others, an individual holding a local elective office and an individual holding a local appointive office who serves for a specified term or at the pleasure of the appointing governing body or executive. *See* §19.42(7w), *Wisconsin Statutes*.

⁸ Section 19.59(1)(a), *Wisconsin Statutes*, 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, 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 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.

Advice

¶ 11. The Ethics Board advises that:

- (1) Both state and local officials may participate in a round-trip train excursion that celebrates a lobbying organization's 10th anniversary;
- (2) The organization should not furnish refreshments to elected state officials or to state agency officials whose responsibilities relate to rule-making; and
- (3) Local public officials and non-elected state officials whose responsibilities do not involve state rule-making may pay for and partake of the food and drink that is offered in connection with the proposed event. The official should pay the greater of [i] the established charge to others for the refreshments, [ii] the organization's cost of providing the refreshments, or [iii] the fair market value of the recipient's independently acquiring like items at a comparable event.

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