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LOBBYING AND LOBBYISTS; SOLICITATION

The Ethics Board advises, consistent with laws it administers, that:

- (1) a division of a state Department may use state resources in connection with its sponsorship of the annual conference of an association of state regulatory agencies;
- (2) the Department's employees may not solicit contributions to help host the conference from a lobbyist or a lobbying principal or from individuals or entities that are likely to be materially affected by laws or rules which the Department is called upon to interpret or apply or that do business with the Department;
- (3) the Department's employees may solicit attendance at the conference by any person other than a lobbyist or a lobbying principal; and
- (4) the Department's employees may prepare and send written notices of the conference to lobbyists and lobbying principals.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You are the administrator of a division in a state department.
- b. The State of Wisconsin is a dues-paying member of an association, which is a subsidiary body of an international organization .
- c. The associations are not-for-profit organizations, the members of which include governmental regulatory agencies.
- d. The division which you head is co-sponsoring the annual conference of the association.
- e. The conference program is devoted to educational topics concerning a state regulatory program.
- f. The meeting will be financed principally by registration fees.

- g. The division plans to actively market the event by preparing materials and promoting the conference, through written materials and personal contacts, to insurance companies and others in the private sector.
- h. The conference also traditionally furnishes exhibitor space to insurers and others for a fee.
- i. The association will solicit and negotiate with potential exhibitors.

Question

¶ 2 The Ethics Board understands your question to be:

Do the division's plans for hosting the conference comport with laws administered by the Ethics Board?

Discussion

¶ 3 In general, state agency involvement in hosting a conference of an organization of state governments or government officials raises two issues: (1) use of state resources and (2) solicitation of private sponsors.

USE OF STATE RESOURCES

¶ 4 The Ethics Code provides that no state public official may use his or her office or position to obtain anything of substantial value for the private benefit of an organization with which the official is associated or to obtain unlawful benefits for another.¹ In addition, it is a well-established principle of law that public funds may be expended only for a public purpose.²

¹ 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.

Section 19.45(5), *Wisconsin Statutes*, provides:

19.45(5) No state public official may use or attempt to use the public position held by the public official to influence or gain unlawful benefits, advantages or privileges personally or for others.

¶ 5 The Department in which you work has elected to become a member of the international organization and the association. It has expended public funds to pay the dues for membership. It has further decided to co-sponsor the conference about which you have asked.³ The Ethics Board is reluctant to second-guess the determination of a state agency, made through applicable agency procedures, that sponsoring or participating in a conference of state governments or government officials is for the benefit of the state and an appropriate expenditure of state funds and resources.⁴ The Board does not possess information that would tend to rebut the Department's conclusion that its use of state resources in connection with its sponsorship of the conference is primarily for a lawful public benefit and purpose.

SOLICITATION

¶ 6 Both the Ethics Code and Wisconsin's lobbying law apply to solicitation by state officers and employees.

Ethics Code

¶ 7 Reduced to its elements, section 19.45(2), Wisconsin Statutes, provides that:

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 an organization with which the official is associated.⁵

² See, e.g., *Hopper v. City of Madison*, 256 N.W.2d 139 (1977); *Wisconsin Solid Waste Recycling Authority v. Earl*, 235 N.W.2d 648 (1975); *State ex re. Warren v. Nusbaum*, 208 N.W.2d 780 (1973).

³ Many state agencies, including the legislature, belong to national organizations of state government bodies or officials. Similarly, many state agencies sponsor the type of conference about which you have asked and authorize employees to attend such conferences.

⁴ 1997 Wis Eth Bd 3, ¶¶5 and 6.

⁵ 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.

¶ 8 You are a state public official.⁶ Using the title or prestige of office, or state resources, to solicit contributions to, or attendance at, the association conference would be a use of office.⁷ Contributions to, or payment for, attendance at the conference are of substantial value.⁸ However, the statutory reference to an “organization” does not include the state or any body politic.⁹ The division which you head is co-sponsoring the annual conference of the association. Your division’s soliciting contributions to, or attendance at, the conference is primarily for the benefit of the state. Therefore, the restriction in §19.45(2) does not apply.

¶ 9 Reduced to its elements, §19.45(3), *Wisconsin Statutes*, provides that:

No state public official
May solicit or accept anything of value
That could reasonably be expected to influence the official’s
judgment or actions.¹⁰

¶ 10 You are a state public official. This prohibition applies whether contributions that are solicited are directed toward the official’s own benefit or to

⁶ Section 19.42(13)(j), *Wisconsin Statutes*, provides:

19.42(13) “State public office” means:

(j) A division administrator of an office created under ch. 14 or a department or independent agency created or continued under ch. 15.

⁷ 1994 Wis Eth Bd 1, ¶5; 1991 Wis Eth Bd 6; 10 Op. Eth. Bd. 47 (1988); 9 Op. Eth. Bd.45 (1987); 9 Op. Eth. Bd. 21 (1986).

⁸ Substantial value is something more than token or inconsequential value. 1995 Wis Eth Bd 5, ¶6; 7 Op. Eth. Bd. 2 (1983).

⁹ Section 19.42(11), *Wisconsin Statutes*, provides:

19.42(11) “Organization” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

¹⁰ Section 19.45(3), *Wisconsin Statutes*, provides:

19.45(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official’s vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

the benefit of another.¹¹ The statutory bar extends to the solicitation or acceptance of contributions to a state agency.¹² Moreover, it applies whether an official solicits funds personally or through the agency's employees acting at the official's behest.¹³

¶ 11 Section 19.45(3)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer could reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office.¹⁴ The Board has said that it is unreasonable to think that an official's actions or judgment would be influenced by contributions given by persons with respect to whom the official's office does not exercise any action at all or only ministerial action or where the contributions are only of modest value.¹⁵ However, the Board has repeatedly advised that state officials not solicit contributions to help host an event from individuals or entities that are likely to be materially affected by laws or rules which the official's agency is called upon to interpret or apply or that do business with the agency.¹⁶ In contrast to such contributions, it seems unreasonable to believe that an official's judgment could be influenced by an individual's paid attendance at a conference or seminar sponsored by a state agency.

¶ 12 Thus, the Ethics Board recommends that you not solicit contributions from individuals or entities that are likely to be materially affected by laws or rules which your department is called upon to interpret or apply or that do business with the agency. Under the plans you have described, the association, and not state employees, will solicit and negotiate with potential exhibitors, although state employees may prepare written materials. This comports with our recommendation.

¶ 13 Your plan also calls for employees of the division which you head to promote the conference to the private sector. This is consistent with the

¹¹ 1996 Wis Eth Bd 14, ¶ 6; 1995 Wis Eth Bd 7; 1994 Wis Eth Bd 1; 4 Op. Eth. Bd. 93 (1981); 4 Op. Eth. Bd. 51 (1980).

¹² 1996 Wis Eth Bd 14, ¶6; 1995 Wis Eth Bd 7; 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9 (1986); 7 Op. Eth. Bd. 19 (1983).

¹³ 1996 Wis Eth Bd 14, ¶6.

¹⁴ 1996 Wis Eth Bd 14, ¶7; 4 Op. Eth. Bd. 93, *supra*; 4 Op. Eth. Bd. 51, *supra*.

¹⁵ 1992 Wis Eth Bd 23; 7 Op. Eth. Bd. 19 (1983); 4 Op. Eth. Bd. 51, *supra*.

¹⁶ 10 Op. Eth. Bd. 31, *supra*; 7 Op. Eth. Bd. 9 (1983). This would include businesses and organizations regulated by your agency. 1992 Wis. Eth. Bd. 23, *supra*; 9 Op. Eth. Bd. 9 (1986). To do otherwise works against an official's impartiality and harms the agency's credibility. 10 Op. Eth. Bd. 31, *supra*.

Ethics Code. We also note that marketing may be done by the association, by the Department of Commerce, or by the Department of Tourism.¹⁷

Lobbying law

¶ 14 Section 13.625(3), *Wisconsin Statutes*, reduced to its elements, provides:

No agency official
May solicit
Anything of pecuniary value
From a lobbyist or a business or organization that employs a lobbyist.¹⁸

¶ 15 An agency official means any department employee whose responsibilities involve rule-making activities that are other than clerical.¹⁹ Under §13.625 of the lobbying law, once it is established that the parties involved are an agency official and a lobbyist or an organization that employs a lobbyist, no further analysis is required -- the official should not solicit

¹⁷ Section 19.56(3)(e) and (em), *Wisconsin Statutes*, provides:

19.56(3) Notwithstanding s.19.45:

(e) A state public official who is an officer or employe of the department of commerce may solicit, receive and retain on behalf of the state anything of value for the purpose of any of the following:

1. The sponsorship by the department of commerce of a trip to a foreign country primarily to promote trade between that country and this state that the department of commerce can demonstrate through clear and convincing evidence is primarily for the benefit of this state.
2. Hosting individuals in order to promote business, economic development, tourism or conferences sponsored by multistate, national or international associations of governments or governmental officials.

(em) A state public official who is an officer or employe of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

¹⁸ Section 13.625(3), *Wisconsin Statutes*, provides, in relevant part:

13.625(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 [specifically] permitted.

¹⁹ Section 13.62(3), *Wisconsin Statutes*, provides:

13.62(3) "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.

money, either personally or through agency employees acting at the official's behest, from a lobbyist or an organization that employs a lobbyist.²⁰

¶ 16 Under the plans you have described, the association, and not state employees, will solicit and negotiate with potential exhibitors, although state employees may prepare written materials. This comports with the lobbying law. However, your plan also calls for employees of your division to promote the conference to the private sector through personal contacts. Although the division may prepare and send written notices of the conference to a lobbyist or principal, an employee of your division who has non-clerical duties related to the promulgation or modification of administrative rules should not, either orally or in writing, solicit attendance from a lobbyist or a lobbying principal. As we said above, that marketing may be done by the association, by the Department of Commerce, or by the Department of Tourism.²¹

Advice

¶ 17 The Ethics Board advises, consistent with laws it administers, that:

- (1) the division which you head may use state resources in connection with its sponsorship of the association annual conference;
- (2) the Department's employees may not solicit contributions to help host the conference from a lobbyist or a lobbying principal or from individuals or entities that are likely to be materially affected by laws or rules which the Department is called upon to interpret or apply or that do business with the Department;
- (3) the Department's employees may solicit attendance at the conference by any person other than a lobbyist or a lobbying principal; and

²⁰ 1996 Wis Eth Bd 14, ¶6. The Ethics Board has consistently held that the law does not sanction doing through an agent what the statute prohibits doing directly. 1996 Wis Eth Bd 5, ¶8; 1992 Wis Eth Bd 29, ¶4; 1992 Wis Eth Bd 27, ¶7; 80 Op. Att'y Gen. 205 (1992).¶

²¹ Section 13.625(9) and (10), *Wisconsin Statutes*, provides:

13.625 (9) This section does not apply to the solicitation, acceptance, or furnishing of anything of pecuniary value by the department of commerce, or to a principal furnishing anything of pecuniary value to the department of commerce, under s. 19.56(3)(e) or (f) for the activities specified in s. 19.56(3)(e).

(10) This section does not apply to the solicitation, acceptance, or furnishing of anything of pecuniary value by the department of tourism, or to a principal furnishing anything of pecuniary value to the department of tourism, under s. 19.56 (3) (em) or (f) for the activity specified in s. 19.56 (3) (em).

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- (4) the Department's employees may prepare and send written notices of the conference to lobbyists and lobbying principals.

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