
1998 Wis Eth Bd 5
IMPROPER USE OF OFFICE; LOBBYING AND LOBBYISTS;
SOLICITATION

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

- (1) a state agency may use state resources in connection with its hosting of a convention of a national organization in Wisconsin; and
- (2) state public officials associated with the agency, and the agency's employees may not, either orally or in writing, personally solicit contributions from a lobbyist, an employee of a lobbying organization, or an employee of a business or organization that is regulated by or does business with the agency.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You are the legal counsel a state agency, on whose behalf you write.
- b. A national association is holding a national convention in Wisconsin in 1998.
- c. The state agency is co-hosting the convention.
- d. At the request of the agency, the Department of Tourism is soliciting and receiving contributions on behalf of the state to help host the convention.

Question

¶ 2 The Ethics Board understands your question to be:

May the state public officials associated with the agency use the title and prestige of their state offices, and state resources, to solicit contributions to the Department of Tourism in support of the convention?

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

¶ 5 The state agency on whose behalf you have written decided to co-sponsor the convention about which you have asked.³ The Department of Tourism has agreed to assist the agency to host the convention pursuant to §19.56(3)(em), *Wisconsin Statutes*.⁴ The Ethics Board is reluctant to second-guess the determination of a state agency, made through applicable

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.

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 rel. 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 Section 19.56(3)(em), *Wisconsin Statutes*, provides:

19.56(3) Notwithstanding s.19.45:

(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.

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.⁵ 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. Thus, using state resources in co-sponsoring the convention appears to be for a lawful public, rather than a private, benefit and, therefore, consistent with laws administered by the Ethics Board.

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 element, §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.⁶

¶ 8 Your question concerns state public officials. Using the title or prestige of office, or state resources, to solicit contributions to the convention is a use of office.⁸ A contribution to the conference is something of substantial value.⁹ State public officials' soliciting contributions to the convention is primarily for the benefit of the state, and not a private benefit. Therefore, the restriction in §19.45(2) does not apply.

⁵ 1998 Wis Eth Bd 2, ¶5; 1997 Wis Eth Bd 3, ¶¶5 and 6.

⁶ 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 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).

⁹ Substantial value is something more than token or inconsequential value. 1995 Wis Eth Bd 5, ¶6; 7 Op. Eth. Bd. 2 (1983).

¶ 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 Your question concerns state public officials. This prohibition applies whether contributions that are solicited are directed toward the official's own benefit or to 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 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 from individuals or entities that are likely to be materially affected by laws or

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.

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, *supra*, ¶6.

¹⁴ 1996 Wis Eth Bd 14, *supra*, ¶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*.

rules which the official's agency is called upon to interpret or apply or that do business with the agency.¹⁶

¶ 12 In this instance, the Ethics Board recommends that the agency not solicit contributions from individuals or entities that are likely to be materially affected by laws or rules, if any, which the agency is called upon to interpret or apply or that do business with the agency. We recommend that the same standard be followed by all the employees of the department and that they not be directed to solicit contributions from an organization or business that is regulated by or does business with the agency. Rather, such solicitation may be undertaken by the Department of Tourism.¹⁷

Lobbying law

¶ 13 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

¶ 14 An agency official means any agency 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 include an agency official and either a lobbyist or an organization that employs a lobbyist, no further analysis is required -- the agency official should not solicit money, either personally or through agency employees acting at the official's

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*.

¹⁷ See n.4, *supra*.

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.

behest, from a lobbyist or an organization that employs a lobbyist.²⁰ That may be done by the Department of Tourism.²¹

Advice

- ¶ 15 The Ethics Board advises, consistent with laws it administers, that:
- (1) the state agency may use state resources in connection with its hosting of the convention in Wisconsin; and
 - (2) state public officials associated with the agency, and the agency's employees may not, either orally or in writing, personally solicit contributions from a lobbyist, an employee of a lobbying organization, or an employee of a business or organization that is regulated by or does business with the agency.

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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(10), *Wisconsin Statutes*, provides:

13.625 (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).