
1998 Wis Eth Bd 10
IMPROPER USE OF OFFICE;
MEALS, LODGING, TRAVEL, AND ENTERTAINMENT

The Ethics Board advises:

- [1] A state public official may accept for the official and for the official's spouse transportation, lodging, meals, food, and beverages, or reimbursement of actual and reasonable costs, from a national association of which the official's state agency is a member, for attendance at the association's meetings to the extent that the official can clearly and convincingly demonstrate that the association's payments are received on behalf of, and primarily for the benefit of, the state and not primarily for private benefit.
- [2] In the normal course of business and in the absence of evidence to the contrary, the Ethics Board will defer to a state agency's determination of whether the provision of travel costs for an official or an official's spouse by a national association of which the state agency is a member is primarily of benefit to and on behalf of the state.

Facts

- ¶ 1 This opinion is based upon these understandings:
- a. You are a state public official in a state agency.
 - b. The agency is a member of a national association.
 - c. You serve as the agency's representative to the association.
 - d. The association is administered by an executive committee composed of officials of member agencies.
 - e. You have been elected to the executive committee.
 - f. The association typically pays the cost of travel, hotels, and meals for executive committee members attending association meetings.
 - g. In addition, the association encourages executive committee members to bring a spouse or a "significant other" to meet-

ings and pays the cost of travel, hotels and meals for that individual.

Questions

¶ 2 The Ethics Board understands your questions to be:

1. Do laws administered by the Ethics Board prohibit your accepting the association's payment of your expenses in attending association meetings?
2. Do laws administered by the Ethics Board prohibit your accepting the association's payment of your spouse's expenses in accompanying you to association meetings?

Discussion

¶ 3 The two statutes most pertinent to your question are §§19.45(2) and 19.45(3m), *Wisconsin Statutes*. Section 19.45(2), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official
May use his or her public position or office
To obtain anything of substantial value
For the private benefit
Of the official or a member of the official's immediate family.¹

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

No state public official
May accept or retain
Any transportation, lodging, meals, food, or beverage, or
reimbursement therefor
Except in accordance with §19.56(3), *Wisconsin Statutes*.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.

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

Section 19.45(3m)

¶ 4 You are a state public official.³ Section 19.45(3m) prohibits your acceptance of transportation, lodging, meals, food, and beverages, or reimbursement therefor, unless a specific exception in §19.56(3), *Wisconsin Statutes*, applies.⁴ The most pertinent exception is §19.56(3)(c). It permits

§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 19.42(13)(c), *Wisconsin Statutes*, provides:

§19.42(13) "State public office" means:

(c) All positions identified under s. 20.923(2), (4), (4m), (6)(f) to (h) and (8) to (10), except clerical positions.

⁴ Section 19.56(3), *Wisconsin Statutes*, provides:

§19.56(3) Notwithstanding s. 19.45:

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(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.

an official to receive and retain transportation, lodging, meals, food, and beverages, or reimbursement of actual and reasonable costs, that “the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.”⁵ You are likely to be able to make that showing if your department determines that your service on the association’s executive committee is of benefit to it and the state, and decides that you should attend association meetings.⁶

¶ 5 It may be difficult for you to demonstrate that your spouse’s attendance at a meeting of the association is primarily for the benefit of the State of Wisconsin rather than for a private benefit; nevertheless, if your department determines that your spouse’s attendance is primarily for the benefit of and on behalf of the state, we will, in the normal course of business and in the absence of evidence to the contrary, defer to your department’s determination.

Section 19.45(2)

¶ 6 As noted above, you are a state public official. Payments for travel, food and lodging have substantial value⁷ unless the payments are permitted under §19.56(3), *Wisconsin Statutes*.⁸ If you can establish that §19.56(3)(c)

(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.

(f) A state public official may receive and retain from the department of commerce anything of value which the department of commerce is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under par. (em).

⁵ A meeting of the association is not a meeting on a topic related to §19.56(1); that is, a meeting “to discuss and to interpret legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.” Thus, §19.56(3)(a) does not apply. Because your receipt of expenses in connection with serving on the association’s executive committee is related to your holding state office, §19.56(3)(b) does not apply.

⁶ 1997 Wis Eth Bd 3, ¶5; 1995 Wis Eth Bd 2, ¶6.

⁷ Something is of substantial value if it is of more than token or nominal value. 1997 Wis Eth Bd 13, ¶4; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

⁸ 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

applies, neither §19.45(3m) nor §19.45(2) will be an obstacle to the acceptance of travel costs to attend the association's meeting. If the travel costs are not primarily for the benefit of the state of Wisconsin, you should not benefit from the association's payment of your costs because your doing so would amount to a use of your government position for a private benefit.⁹

Advice

¶ 7 The Ethics Board advises:

- [1] You may accept for yourself and for your spouse transportation, lodging, meals, food, and beverages, or reimbursement of actual and reasonable costs, from the association, for attendance at its meetings to the extent that you can clearly and convincingly demonstrate that the association's payments are received on behalf of, and primarily for the benefit of, the state and not primarily for private benefit.
- [2] In the normal course of business and in the absence of evidence to the contrary, the Ethics Board will defer to your department's determination of whether the association's provision of travel costs for you or your spouse is primarily of benefit to and on behalf of the state.

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ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

⁹ 1992 Wis Eth Bd 7, ¶4; 1992 Wis Eth Bd 4, ¶4.

We note that your state agency could pay the travel expenses associated with your or your spouse's attendance at association meetings if it determines that such attendance serves a public purpose. See, e.g., *State ex rel. Warren V. Nusbaum*, 59 Wis. 2d 391, 421, 208 N.W.2d 780 (1973); *State ex rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183, 277 N.W. 278, 280 N.W. 698 (1938). Section 19.45(2) does not restrict the acceptance of expenses paid by the state; §19.42(1) defines "anything of value" to exclude "expenses paid by the state." Nothing in the Ethics Code precludes the association from reimbursing the state for the state's payment of your or your spouse's expenses.