
1999 Wis Eth Bd 4
LOBBYING AND LOBBYISTS

The Ethics Board advises that an organization that employs a lobbyist may (1) neither directly pay reimbursement of expenses to a member of its board of directors who is an agency official under the lobbying law (2) nor arrange for another organization to pay expenses arising from the official's activities as a member of the organization's board.

Facts

- ¶ 1 This opinion is based upon these understandings:
- a. You write on behalf of an organization that is a lobbying principal in Wisconsin.
 - b. Several members of a state council are members of the organization's board of directors.
 - c. The organization reimburses members of its board of directors for expenses related to board membership.

Questions

- ¶ 2 The Ethics Board understands your questions to be:
1. May the organization reimburse the expenses of its board members who are members of the state council?
 2. May the organization arrange for other organizations that are not lobbying principals to pay the expenses of its board members who are members of the state council?

Discussion

¶ 3 Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*, is relevant to your question.¹ That section, reduced to its elements, provides:

¹ Members of the council are not state public officials and are not subject to the Ethics Code. See §19.42(13), *Wisconsin Statutes*.

No lobbying principal
May furnish
Anything of pecuniary value
To an agency official.²

¶ 4 You have acknowledged that the organization on whose behalf you write is a lobbying principal.

Agency officials

¶ 5 The first issue is whether a member of a state council is an agency official. 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.

¶ 6 The council is an agency.³ "Administrative action" means the proposal, drafting, development, and consideration of a rule under Chapter 227, *Wisconsin Statutes*.⁴ In establishing the council the Legislature has provided that it shall review and make recommendations regarding administrative rules. Thus, a member of the council has the responsibility of participating in

² Section 13.625(1) and (2), *Wisconsin Statutes*, in relevant part, 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

(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 Section 13.62(2), *Wisconsin Statutes*, provides:

13.62(2) "Agency" means any board, commission, department, office, society, institution of higher education, council or committee in the state government, or any authority created in ch. 231, 232, 233 or 234, except that the term does not include a council or committee of the legislature.

⁴ Section 13.62(1), *Wisconsin Statutes*, provides:

13.62(1) "Administrative action" means the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227.

administrative action and is an agency official subject to the restrictions in the lobbying law.

Reimbursement of expenses

¶ 7 The next issue is whether furnishing reimbursement of expenses for items such as food, drink, transportation, and lodging is furnishing something of pecuniary value. Monetary reimbursement has pecuniary value.⁵ An organization's giving money to individuals is a furnishing. This is so even if the reimbursement only makes the recipient whole.⁶ Thus, the organization is barred from reimbursing the expenses of its board members who are agency officials.

¶ 8 As the Ethics Board has consistently said, the lobbying law's purpose is to draw a clear line barring private economic transactions between state officials and businesses and organizations that pay lobbyists to influence those same officials.⁷ Here, we note that the organization is likely to have a strong interest in the work of the council and is likely to be interested in influencing the very rules on which the council may comment.⁸

Arranging reimbursement

¶ 9 The last issue is whether, consistent with the lobbying law, the organization may arrange for other organizations to pay council members who are also members of the organization's board of directors the expenses incurred by those individuals in connection with their activities as members of the board.

¶ 10 The Ethics Board advises that the organization not make such arrangements. Both the Ethics Board and the Attorney General have consistently said that a lobbying principal may not do indirectly that which

⁵ 1997 Wis Eth Bd 20, ¶4.

⁶ 1997 Wis Eth Bd 20, ¶4; 1996 Wis Eth Bd 6, ¶4 (an agency official who serves as a member of the board of directors of an organization that employs a lobbyist may not accept reimbursement from the organization for expenses the official incurs in attending the organization's board of directors meetings). The Attorney General has said that the word "furnish," as used in the lobbying law, includes both giving gratuitously as well as exchanging something for fair value. 80 Op. Att'y Gen. 205 (1992); 77 Op. Att'y Gen. 160 (1988); cited with approval at 1996 Wis Eth Bd 7, ¶ 4.

⁷ 1997 Wis Eth Bd 20, ¶4; 1996 Wis Eth Bd 7, ¶4, n.2.

⁸ It is true that an employee of the organization could continue to receive compensation from the organization while serving as a member of the council under the exception in §13.625(6r), *Wisconsin Statutes*. The Ethics Code, if applicable to council members, would likely bar this. See, e.g., 1994 Wis Eth Bd 5.

the law prohibits the principal from doing directly.⁹ This does not appear to be a situation in which another organization, on its own volition, simply volunteers to pay expenses; if that were the case, the lobbying law would not apply unless the other organization also employed a lobbyist.¹⁰ It seems unlikely that a separate organization would, on its own initiative, begin to pay expenses incurred by directors of another organization for services to the latter organization and for which the latter organization is responsible. Rather, the lobbying organization appears to be arranging with other organizations to reimburse individuals on its behalf for expenses that it would otherwise be obligated to pay but for the restrictions of the lobbying law.¹¹ This view is reinforced by the fact that the organization itself is the cause of the individuals incurring the expenses; according to your letter the expenses arise directly from each individual's activities as a member of the organization's board of directors.

Advice

¶ 11 The Ethics Board advises that an organization that employs a lobbyist may neither directly pay reimbursement of expenses to a member of its board of directors who is an agency official under the lobbying law nor arrange for another organization to pay expenses arising from the official's activities as a member of the organization's board.

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⁹ 1996 Wis Eth Bd 17, ¶15; 1992 Wis Eth Bd 27, ¶4; 1991 Wis Eth Bd 8, ¶3; 80 Op. Att'y Gen. 205, 208 (1992).

¹⁰ This is also distinguishable from the case in which a lobbyist advises others concerning the making of a campaign contribution. 1996 Wis Eth Bd 5. Individuals make campaign contributions on their own volition all the time. In addition, First Amendment concerns are not present in the payment of a director's expenses.

¹¹ 80 Op. Att'y Gen. 205, 208 (1992) (an official does not violate the lobbying law if the official's employer does business with a lobbyist if the official's compensation is totally unrelated to and not determined by the income derived from the lobbyist); 1992 Wis Eth Bd 26, ¶4 (an official may not accept compensation from the official's employer if it consists of commissions derived from work for specific clients that are principals because such compensation cannot be said to be "unrelated to and not determined by" the principal's retention of the official's employer).