1999 Wis Eth Bd 5
REWARD FOR OFFICIAL ACTION

The Ethics Board advises that a not-for-profit foundation not furnish an annuity to the director of a state agency in response to its concern about the director's level of compensation and retirement benefits.

Facts

¶ 1 This opinion is based upon these understandings:

a. You write at the direction of a board that directs a state agency.

b. The board is concerned about the level of the agency director's compensation and retirement benefits.

c. There is a not-for-profit foundation formed solely to benefit the agency.

d. The foundation has expressed an interest in providing the director with an annuity after the director leaves state service.

Question

¶ 2 The Ethics Board understands your question to be:

Is the foundation's proposal consistent with laws administered by the Ethics Board?

Discussion

¶ 3 The provision of the Ethics Code most relevant to your question is §19.45(3), *Wisconsin Statutes*. Reduced to its elements, §19.45(3) provides:

No person
May offer or give
To a state public official
And no state public official
May solicit or accept

Anything of value
If it could reasonably be considered as a reward for any official action.[1]

¶ 4 The director of the state agency is a state public official.[2] An annuity is something of value. The only question is whether furnishing the annuity can reasonably be considered a reward for official action. "Reward" means "something given or received in recompense for worthy behavior,"[3] "something given or received in return or recompense for service, merit, hardship, etc.,"[4] "something . . . that is offered or given for some service or attainment."[5]

¶ 5 Providing additional compensation or benefits to an individual holding a public position because of a concern about the official's level of compensation can reasonably[6] be considered a reward for the official's performance of his or her duties.[7] Here, it is specifically offered to recompense the director for his official services. Thus, it would be improper for the foundation to offer or secure an annuity for the director.

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[1] 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.

[2] A "state public official" includes an individual holding a position identified under §20.923(4), *Wisconsin Statutes*. §19.42(13)(c), *Wisconsin Statutes*. The director of the agency is identified in §20.923(4) , *Wisconsin Statutes*.

[3] *American Heritage Dictionary of the English Language*, 1981.

[4] *Random House Dictionary of the English Language*, Second edition, Unabridged, 1987.

[5] *Webster's Third New International Dictionary*, 1981.

[6] Section 19.45(3)'s application depends on an objective standard; it proscribes the offer, solicitation, or receipt of anything of value if an impartial observer could reasonably conclude that it is a reward for official activities. *See* 1996 Wis Eth Bd 14, ¶7; 10 Op. Eth. Bd. 39 (1988) (it would violate this section for a legislator to accept a credit card at a reduced fee when eligibility is based on the Legislature's action to appropriate money for the Legislature's membership fee in the organization offering the deal).

[7] The plain meaning of the statute does not impose a requirement that a reward be linked to any one specific action.

Advice

¶ 6 The Ethics Board advises that the foundation not furnish an annuity to the director of the state agency on whose behalf you write.

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