
1993 Wis Eth Bd 4
IMPROPER USE OF OFFICE; INFLUENCING OFFICIAL JUDGMENT;
LEGISLATORS; LOBBYING AND LOBBYISTS; REPRESENTATION OF
CLIENTS

A legislator may not accept anything of pecuniary value from a lobbying principal. To the extent that a referendum committee is an intermediary, agent, or alter ego for a lobbying principal, a legislator should treat the referendum committee as if it were a lobbying principal and be guided by the advice given in 1992 Wis Eth Bd 26.

A legislator should not bid or negotiate for, nor should anyone offer him or her, work on behalf of a referendum committee if it involves a matter on which the legislator is authorized to take any discretionary action unless the Legislature has completed its final action on that matter.

Because referenda are part of the work of the Legislature, we recommend that a legislator not take pay to work on a referendum unless the legislator is confident that he or she can demonstrate that the employment is unrelated to being a member of the Legislature and is unlikely to influence the judgment the legislator exercises as a state official.

OEB 93-4 (February 10, 1993)

Facts

[1]

- a. You are a member of the state Legislature and a state public official.
- b. You are employed with a firm in a position that includes consulting work.
- c. The firm may be retained to provide consulting services to campaign committees established to support or oppose state referenda.
- d. The campaign committees might receive contributions from lobbyists and principals.

Question

[2] The Ethics Board understands your question to be:

What restrictions, if any, does the Ethics Code or lobbying law impose on your providing consulting services to referenda committees?

Discussion

[3] There are several statutory provisions that may apply to restrict your providing consulting services for compensation to referenda committees.

Ethics Code

[4] The Legislature has specifically recognized that individuals who serve as state public officials retain their rights as citizens to interests of a personal or economic nature and that state public officials may need to engage in employment, or professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity. Section 19.45(1), *Wisconsin Statutes*. The Ethics Code "does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to the state." *Id.*

[5] By the same token, a public officer owes an undivided duty of loyalty to the public whom he or she serves and should avoid placing himself or herself in a position in which a conflict of interest might arise.¹ Several provisions of the Ethics Code are intended, at least in part, to help effectuate this doctrine and are pertinent to the situation about which you seek advice. Of particular importance are §§19.45(2), 19.45(3), and 19.46(1)(b), *Wisconsin Statutes*. Those sections provide:

19.45 Standards of conduct; state public officials. (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.

(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.

¹ 1992 Wis Eth Bd 33; 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

19.46 Conflict of Interest Prohibited; Exception. (1)

Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

There are several ways in which these sections might restrict your provision of paid consulting services to a referendum committee.

[6] First, sections 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*, prohibit you from using your public office or position to obtain financial gain or anything of substantial value for yourself or an organization with which you are associated or to assist in the production of a substantial private benefit. While the law does not preclude the acceptance of consulting work offered because of your general political skills and experience, it does preclude your trading on the title or prestige of your office to obtain employment and precludes you from accepting work offered because of your position as a legislator. It may not always be easy to know whether you are being asked to provide consultation on a particular issue because of your skills or because of your position; however, because referenda are intimately associated with the work of the Legislature and require legislative action before being placed on a ballot, you should not accept paid employment on referenda unless you can clearly demonstrate that the work is unrelated to and does not arise from your holding a public office.

[7] Second, you should be able to demonstrate that your paid employment could not reasonably be expected to influence your official judgment or actions on that issue. §19.45(3). Proposed referenda may create intense debate and generate the formation of coalitions and interest groups even before the legislature has acted to place a referendum on the ballot. You should not accept paid employment from a group favoring or opposing a referendum, nor should anyone offer you such employment, before the Legislature has completed its actions to place the matter on a ballot.²

Lobbying law

[8] Wisconsin's lobbying law generally prohibits a legislator from accepting anything of pecuniary value from a lobbyist or an organization that employs a lobbyist ("principal").³ This prohibition includes compensation for

² §19.42(1), *Wisconsin Statutes*, provides:

19.42 Definitions. In this subchapter:

(1) "Anything of value" means any . . . promise of future employment . . .

³ §13.625(1)(b), (2), and (3), *Wisconsin Statutes*, provides:

employment.⁴ As we indicated in an earlier opinion, this prohibition precludes an individual's being paid to provide professional services customarily charged on an hourly basis specifically for a principal.⁵ In the situation you have described, you would be performing work for campaign committees that are not themselves principals; however, if a committee is merely a vehicle established by principals or lobbyists to advocate issues in a non-legislative forum, or if the committee operates under their control, you should not provide consulting services to that committee.⁶

Advice

[9] You may not accept anything of pecuniary value from a lobbying principal. To the extent that a referendum committee is an intermediary, agent, or alter ego for a lobbying principal, you should treat the referendum committee as if it were a lobbying principal and be guided by the advice that we gave you in June 1992.

[10] You should not bid or negotiate for, nor should anyone offer you, work on behalf of a referendum committee if it involves a matter on which you are authorized as a legislator to take any discretionary action unless the Legislature has completed its final action on that matter.

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, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(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) 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 permitted under subs. (1)(b)3 and (c), (2), (4), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).

⁴ 1992 Wis Eth Bd 26; 1992 Wis Eth Bd 05; 1992 Wis Eth Bd 03; 77 Op. Atty. Gen. 160 (1988).

⁵ 1992 Wis Eth Bd 26.

⁶ 1992 Wis Eth Bd 27.

[11] Because referenda are part of the work of the Legislature, we recommend that you not take pay to work on a referendum unless you are confident that you can demonstrate that the employment is unrelated to your being a member of the Legislature and is unlikely to influence the judgment you exercise as a state official.