
2002 Wis Eth Bd 01
LOCAL CODE – DISQUALIFICATION

The Ethics Board advises:

1. As long as the effect of teacher contract negotiations on the salary and benefits provided to school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union. Resolution of the issue requires a determination of fact that cannot be made in an opinion. A school district's attorney is in a better position to ascertain this fact.
2. A school board and superintendent should amend the superintendent's employment contract to remove a provision that ties the superintendent's salary increases to increases provided to district administrators.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You are the legal counsel for a school district.
 - b. The spouse of a school board member is a principal in the school district.
 - c. The employment contract of the school district superintendent provides for an annual increase in the superintendent's salary that is no less than that afforded to administrators.

Questions

- ¶2 The Ethics Board understands your questions to be:
1. May a member of the school board whose spouse is a principal in the school district participate in negotiations and votes on collective bargaining agreements covering teachers or other school district employees.
 2. May the school district superintendent participate in negotiations or decisions regarding the teachers' contract or wage increases for school district administrators when the superintendent's employment contract provides for an annual increase in salary that is no less than the percentage afforded to administrators.

Discussion

¶3 Section 19.59, *Wisconsin Statutes*, provides that no local public official may use his or her office or position to obtain anything of substantial value for the private benefit of the official or the official's immediate family or participate in a matter in which the official or the official's immediate family has a substantial financial interest.¹ Both the school board member and the superintendent are local public officials.²

¶4 *Your first question is whether a member of the school board whose spouse is a principal in the school district may participate in the negotiations and votes on collective bargaining agreements covering teachers or other school district employees.*

¶5 As you recognize in your letter to us, the Ethics Board has previously held, in a situation in which a school board member's spouse was a teacher in the school district, that "if the terms of another union contract will serve as precedent for the terms of the teachers' contract, then the Ethics Board advises that the Board member not participate in negotiations, discussions or votes on any of those contracts." 1997 Wis Eth Bd 6. You have stated: (1) that school principals are not represented by a union; (2) that no law, school board policy, or agreement entitles principals to the same benefits as teachers; and (3) that a review of past practice does not establish that changes in teacher salaries and benefits serve as precedent to those provided to school principals.

¶6 If by established practice or agreement the school board provides its administrators with the same or better wages, benefits, or working conditions

¹ Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local 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.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. 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.

² See 1997 Wis Eth Bd 6, ¶6; 1999 Wis Eth Bd 01, ¶4.

as the school board establishes in its contract with teachers, then a member of the school board whose spouse is an administrator for the district ought not, on behalf of the school board, negotiate with the teachers' representative about wages, benefits, or working conditions. The reason is that the school board member would have a personal financial stake in the contract the member was negotiating on the school board's behalf. We agree with you, however, that as long as the effect of teacher contract negotiations on school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union.³ 1995 Wis Eth Bd 4, ¶7.

¶7 *Your second question is whether the school district superintendent may participate in negotiations or decisions regarding the teachers contract or wage increases for school district administrators when the superintendent's employment contract provides for the superintendent's annual salary to increase by no less than the percentage afforded to administrators.*

¶8 The school board and superintendent should amend the superintendent's employment contract to remove the provision that ties the superintendent's salary increases to increases provided to district administrators. The superintendent is subject to the same statutory requirements under §19.59 as a school board member. Section 19.59 prohibits the superintendent to use his or her position to obtain anything of substantial value for the superintendent's private benefit or participate in any matter in which the superintendent has a personal financial interest. You have told us that the superintendent's using the superintendent's position to affect teacher contracts does not directly affect the superintendent's salary. However, under the existing contractual provision, there is a direct link between administrator salary increases and any salary increase for the superintendent. The superintendent's use of his position to affect administrators' salaries would necessarily have a direct personal financial effect.

¶9 Citing prior Ethics Board opinions, you have suggested that the statutory restriction should not apply because:

1. The superintendent is part of a large class of similarly situated individuals;

³ In this opinion, we have stated how the law applies to certain facts. We have not investigated the underlying facts. We advise you on the facts as you have presented them. If the effect of teacher contract negotiations on school principals is uncertain and conjectural, a school board member whose spouse is a principal may, on the school board's behalf, negotiate with the teachers' union. If the negotiations will establish the basis for the principal's contract, the school board member should not participate.

2. The superintendent's interest is insignificant compared to all affected interests in the class; and
3. The effect of the superintendent's actions in negotiating district administrator salary increases is neither greater nor less for the superintendent than for other members in the class.⁴

¶10 That test does not apply here. The Ethics Board developed the test in recognition that the law favors an official's exercise of the official's public duties. The Board has applied the test only with respect to legislative or quasi-legislative issues; that is, to matters of broad policy. It does not, and should not, apply in the context of a quasi-judicial decision such as recommending specific salary increases for a group of individuals.

Advice

¶11 The Ethics Board advises:

As long as the effect of teacher contract negotiations on the salary and benefits provided to school principals is uncertain and conjectural, §19.59 does not restrict a school board member whose spouse is a principal to participate in negotiations with the teachers' union. You have provided evidence that the effect of teacher contract negotiations on principals' salaries and benefits is uncertain and conjectural; however, resolution of your inquiry requires a determination of fact that cannot be made in this opinion. You are in a better position to ascertain this fact.

The school board and superintendent should amend the superintendent's employment contract to remove the provision that ties the superintendent's salary increases to increases provided to district administrators.

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⁴ 11 Op. Eth. Bd. 9 (1989); 8 Op. Eth. Bd. 38 (1985), 22 (1984); 5 Op. Eth. Bd. 90 (1982), 65 (1981); 4 Op. Eth. Bd. 104 (1981).