
2002 Wis Eth Bd 07
LOCAL OFFICIALS

The Ethics Board advises:

If a member of a village board participated in the village's decision to hire him to supervise a village project, then he should return the checks he has received and not accept any payment for the services he has provided. If the member of the village board abstained from participating in the village's earlier decision, then §19.59, *Wisconsin Statutes*, permits him to accept payment for the services he has provided.

Facts

¶1 This opinion is based upon these understandings:

- a. You are the attorney for a village.
- b. The village completed a major waterworks project this summer.
- c. A federal agency financed the project and advised that the village would need to appoint a resident inspector.
- d. The village board decided to hire John Doe, a member of the village board, to be resident inspector.
- e. Mr. Doe is an engineer with experience overseeing a similar project in the past as a member of the village's water and sewer committee and the village board believed him to be well qualified to oversee this project.
- f. The federal agency approved Mr. Doe's appointment.
- g. Mr. Doe's bill totaled around \$6,000.
- h. Mr. Doe has not cashed any of the checks he has received.

Questions

¶2 The Ethics Board understands your question to be:

Do laws administered by the Ethics Board permit Mr. Doe to accept payment for service as the resident inspector for the village's waterworks project?

Discussion

¶3 Section 19.59(1)(a) and (c)2, reduced to their elements, provide:

No local public official
May use his or her office
To obtain anything of substantial value or benefit
For the official or an organization with which the official is associated.¹

Section 19.59(1)(c)1, reduced to its elements, provides:

No local public official
May take any official action
Substantially affecting a matter
In which the official or an organization with which the official is associated
Has a substantial financial interest.²

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

19.59 (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. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

Section 19.59(1)(c)2., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:
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 Section 19.59(1)(c)1, *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:

¶4 A member of a village board is a local public official.³ Participating in official debate, discussions, or votes is a use of office and official action.⁴ A contract to perform work for the village that pays close to \$6,000 is something of substantial value and is a private benefit.⁵ Thus, a village board member should not participate in a decision whether the village should award the official a contract for services.

¶5 You have not indicated what role, if any, Mr. Doe played in the village's decision to hire him as the resident inspector for the village's waterworks project. If Mr. Doe did participate in the village's decision to hire him, then Mr. Doe should return the checks he has received and not accept any payment. In that way, he will avoid having used his office for personal gain. In contrast, if Mr. Doe abstained from participating in the village's earlier decision, then §19.59, *Wisconsin Statutes*, permits him to accept payment for the services he has provided.⁶

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.

³ Section 19.42(7u), *Wisconsin Statutes*, provides:

19.42(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

Section 19.42(7w)(a), *Wisconsin Statutes*, provides:

19.42(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

⁴ 1999 Wis Eth Bd 3, ¶5; 1997 Wis Eth Bd 1, ¶4; 1995 Wis Eth Bd 6, ¶4; 1995 Wis Eth Bd 3, ¶4.

⁵ "Substantial value" is contrasted with mere token or inconsequential value. 1997 Wis Eth Bd 2, ¶4; 1995 Wis Eth Bd 5, ¶6; 1993 Wis Eth Bd 8, ¶6; 7 Op. Eth. Bd. 1 (1983); 5 Op. Eth. Bd. 97 (1982). 1995 Wis Eth Bd 3, ¶9 (legislator should not vote to retain his or her salaried position on the governing board of a governmental entity); 1995 Wis Eth Bd 1, ¶6 (an agency official should not participate in a rulemaking proceeding that allocates business opportunities, if the official would receive an allocation, even if the official would be no better off under an allocation system than under the current unregulated approach).

⁶ You have also asked about application of the doctrine of incompatibility of office and §66.0501, *Wisconsin Statutes*. Those questions fall outside the Ethics Board's jurisdiction and should be addressed to the Attorney General.

Advice

¶6 The Ethics Board advises:

- 1) If Mr. Doe participated in the village's decision to hire him, then Mr. Doe should return the checks he has received and not accept any payment for the services he has provided; and
- 2) If Mr. Doe abstained from participating in the village's earlier decision, then §19.59, *Wisconsin Statutes*, permits him to accept payment for the services he has provided.⁷

WR 1128

⁷ It is our understanding that you have analyzed §946.13, *Wisconsin Statutes*, and have not found that statute to be an obstacle to this.