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**2003 Wis Eth Bd 07**  
**STATEMENTS OF ECONOMIC INTERESTS**

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The Ethics Board advises:

- (1) that a state employee in the classified service appointed to act as a division administrator is a state public official subject to the substantive requirements of the Ethics Code; and
- (2) that the individual is required to file a Statement of Economic Interests.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You write on behalf of a state agency.
  - b. An individual is in the classified civil service and is a career executive at the agency.
  - c. Pursuant to Wis Admin Rule ER 30.085 the Secretary has appointed the individual to exercise the powers, duties, and responsibilities of a division administrator.

Questions

- ¶2 The Ethics Board understands your question to be:

Is the individual a state public official required to file a Statement of Economic Interests under Wisconsin's Code of Ethics for State Public Officials and Employees?

Discussion

¶3 The answer to your question is that the individual is a state public official subject to the substantive requirements of the Ethics Code and is required to file a Statement of Economic Interests.

- ¶4 Section 19.42 (14), *Wisconsin Statutes*, provides:

**19.42 (14)** "State public official" means any individual *holding* a state public office.

¶5 (Emphasis added). A state public office includes a division administrator, whether classified or unclassified, of a department created under ch. 15, *Wisconsin Statutes*. §19.42(13)(j), *Wisconsin Statutes*. Your agency is created in ch. 15, *Wisconsin Statutes*.

¶6 Section 19.42(14) does not make a distinction between an individual who has been appointed to a state public office on an acting or permanent basis. Nor does it matter under what personnel rule, if any, an assignment to a position is made. The issue is whether an individual has been assigned the powers and duties of a position that is defined as a state public office. In considering when an individual becomes in fact a public official, the courts have said

As a general rule, all that is required to make an officer de facto is that the individual claiming the office be in possession of it, performing its duties, and claiming to be such officer under color of an election or appointment.\*

¶7 We note that almost all division administrators serve at the pleasure of their appointing authority. In this sense, there is little to distinguish between the status of an acting division administrator and a “permanent” division administrator, other than in name.

¶8 In addition, a division administrator is among the state public officials required to file a Statement of Economic Interests. §19.42(10)(k), *Wisconsin Statutes*.

### Advice

¶9 The Ethics Board advises

(1) that the individual is a state public official subject to the substantive requirements of the Ethics Code; and

(2) that the individual is required to file a Statement of Economic Interests.

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\* *Walberg v. State*, 73 Wis.2d 448, 463-64 (1976); *State ex rel. Reynolds v. Smith*, 22 Wis.2d 516, 522 (1966); *Joyce v. Town of Tainter*, 232 Wis.2d 349, 354 (Ct. App. 1999).