
2004 Wis Eth Bd 06 SUPPLEMENTAL
DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL
DUTIES; IMPROPER USE OF OFFICE

¶1 You have asked us to review the advice we recently provided you. We have done that and reaffirm our prior opinion.

¶2 The principle governing the circumstance about which you've asked is that a Wisconsin legislator should not simultaneously accept money as a proponent of public policy and use his governmental position to advance that policy in our state.

¶3 A legislator's accepting money to advance or assist an organization's advancing an important public policy inappropriately undermines the public's confidence in the legislator's independence of judgment and impedes a legislator's fulfilling his common law duty of undivided loyalty to the public.

¶4 These concerns are not groundless speculation. One need only note that the president of an organization that employs a lobbyist in Wisconsin is also listed as a director of your employer.

¶5 The circumstance about which you have asked differs materially from a legislator's carrying on a trade or profession while voting on issues that might affect the trade or profession generally. It differs also from a legislator's accepting an honorarium from an organization to discuss and to interpret legislative processes and proposals and issues initiated by or affecting a state agency. State law specifically encourages our state's governmental officials to meet with organizations for those purposes [§19.56 (1), *Wisconsin Statutes*] and authorizes them to accept honorariums on those occasions as long as the sponsoring group does not employ a lobbyist and the honorarium's value is reasonable under the circumstances. That is why we advised in 1994 that a legislator could accept compensation from a television station for participation in a news and commentary show. Over the years, we have had ample occasion to provide other legislators with like advice. This also pertains to legislators speaking to clubs and schools and other gatherings about "important public policy issues". The Board's advice on these matters has been consistent. The Board has not approved and has no knowledge, apart from the information contained in your letter, of other legislators' conduct that might be at variance with our advice.

¶6 You asked that we review our earlier advice to legislators. We have done that. In 1993, we wrote:

. . . a legislator should not accept payments for consulting work if that employment could reasonably be expected to influence the legislator's official judgment or actions. 19.45(3), *Wisconsin*

Statutes. A legislator's acceptance of payments from an organization with a substantial and demonstrated interest in issues likely to be addressed by Wisconsin's Legislature could reasonably be expected to affect his or her official judgment and actions in a manner sympathetic to the client. The standard imposed by the statute is an objective one. It is not enough that a legislator and his or her client are philosophically aligned. Rather, the question is whether a reasonable person would expect that the legislator's employment would influence his or her official judgment. For this reason, the Board recommends that a legislator not accept payments for offering consultation, advice, or strategy on issues if there is a reasonable possibility that they will be addressed by Wisconsin's Legislature.

¶7 That same year we again wrote:

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.

¶8 You have asked us to clarify on what issues you are precluded from participating as an official. You should not use your governmental position to advance the issues about which you are providing professional services to the organization that has employed you or issues reasonably and proximately related to them. You are well positioned to identify those issues.

¶9 You should not participate in discussions, deliberations, or votes of the legislature, its caucuses, committees, or components that pertain to the issues or matters proximately related to issues about which you provide services to your employer. That directive is tempered by our recognition that you may, consistent with our advice, participate in discussions, deliberations, and votes on all other portions of and the passage of the state budget and omnibus bills only small components of which pertain to the subjects on which your governmental action is proscribed.