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**2005 Wis Eth Bd 02**  
LOCAL CODE -- DISQUALIFICATION

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The Ethics Board advises:

- 1) That the retired teacher who is a member of the school district's board of education should not vote on the resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy if that is likely to affect the health benefits the member receives; but
- 2) That the retired teacher who is a member of the school district's board of education may vote on the resolution if its effect on the member's health benefits is remote and speculative.

Facts

¶1 This opinion is based upon these understandings:

- a. You are legal counsel to a school district on whose behalf you write.
- b. A member of the board of education is a retired teacher who receives health and dental care benefits under the terms of a collective bargaining contract.
- c. A proposed resolution before the school board would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy at the maximum allowed by state law.
- d. The revenue assumption could mean an increase in all school-related expenditures.
- e. A new collective bargaining agreement has not yet been negotiated.

Questions

¶2 The Ethics Board understands your question to be:

Does §19.59 (1) (c) or §946.13, *Wisconsin Statutes*, restrict the board member's participation in discussions and votes on a proposed resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy at the maximum allowed by state law.

Discussion

¶3 Several provisions of the Code of Ethics for Local Government Officials, Employees and Candidates apply to your questions.

Section 19.59 (1) (a), *Wisconsin Statutes*, reduced to its elements, provides:

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.<sup>1</sup>

Similarly, §19.59 (1) (c) 2, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official  
May 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 or a member of his or her immediate family.<sup>2</sup>

Finally, §19.59 (1) (c) 1, *Wisconsin Statutes*, reduced to its elements, provides:

No local public official

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<sup>1</sup> Section 19.59(1)(a), *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. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III 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.

<sup>2</sup> 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.

May take any official action  
Substantially affecting a matter  
In which the official or a member of his or her immediate family  
Has a substantial financial interest.<sup>3</sup>

¶4 As the Ethics Board has said in the past:

The terms of a health insurance contract can be something of substantial value and a substantial benefit to the insured.

¶5 1996 Wis Eth Bd 10, ¶7. The Ethics Board has also stated:

[I]f the school board has not entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget, then acting on a budget that sets parameters for collective bargaining is likely to substantially affect [in the case of a school board member whose spouse is a teacher] the school board member's financial interests.

¶6 The question here is whether voting on the resolution that sets the parameters for the budget is likely to substantially affect the health insurance benefit received by retired teachers. This is a question of fact that you might be in a better position to resolve than the Ethics Board.

¶7 However, we note that the situation you ask about appears different from the situation addressed by the Ethics Board in 1996 Wis Eth Bd 10 in two respects: (1) the vote here is not on the budget, but rather on the parameters to be used in drafting a budget; and (2) the board member's interest is only in one aspect (health insurance benefits) of the benefits of any future collective bargaining agreement that may be negotiated with the teachers' union. We have said that if the effect of an official action on the financial interest of an official is remote and speculative, the statutory restriction does not come into play. 1997 Wis Eth Bd 6, §13; 1996 Wis Eth Bd 3, ¶5; 1995 Wis Eth Bd 4, ¶7. Without knowing more, it appears that the effect of setting the parameters for budget drafting on the ultimate health benefits that will be negotiated as part of a teachers' contract is, at this point, remote and speculative.

### Advice

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<sup>3</sup> 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:

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.

¶8 The Ethics Board advises:

- 1) That the retired teacher who is a member of the school district's board of education should not vote on the resolution that would establish, for the 2005-2006 budget, revenue assumptions and a supporting tax levy if that is likely to affect the health benefits the member receives; but
- 2) That the retired teacher who is a member of the school district's board of education may vote on the resolution if its effect on the member's health benefits is remote and speculative.

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