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**2005 Wis Eth Bd 03**  
**PUBLIC CONTRACTS**

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The Board advises:

- 1) That you notify the Ethics Board and the appropriate state agency before entering a contract with a local Wisconsin government in which the local government is acting as the state's agent; and
- 2) You need not provide notification to anyone if the contract is paid from shared revenues or other funds the state provides the local government over which the state has ceded control.

¶1 This is in response to your recent questions about application of the notification requirement in §19.45 (6), *Wisconsin Statutes*, to contracts your family's business may enter into with local units of government in Wisconsin. Section 19.45 (6), reduced to its elements, provides:

No state public official or organization with which the official is associated

May enter into a contract involving payments of more than \$3,000 within a 12-month period

In whole or in part derived from state funds

Without first making written disclosure of the official's relationship to the contractor or interest in the contract

To the Ethics Board

And to the department acting for the state in regard to such contract.<sup>1</sup>

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<sup>1</sup> Section 19.45 (6), *Wisconsin Statutes*, provides:

**19.45 (6)** No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced within 3 years of

¶2 The issue is how, if at all, this statute applies to a contract involving funds provided by the state to a local governmental unit. Specifically, the question is whether funds provided by the state to a local government are “state funds” within the meaning of the statute. The Ethics Board has not had occasion to address this issue before. Based on our review of the statute’s language and its legislative history, we believe the notification requirement applies only if the local government is acting as an agent of the state with respect to a contract. It does not apply if a local government is simply using shared revenue or other funds over which the state has ceded control because then the funds are no longer state funds, they are the local government’s funds.<sup>2</sup>

¶3 The legislative history as well as the reporting and enforcement structure of the statute supports this interpretation. In analyzing 1977 Assembly Bill 349, which was enacted as the Ethics Code and which included 19.45 (6) in its present form, the Legislative Reference Bureau described the provision as follows:

State officials, family members and organizations in which they have a 10% or greater interest which make contracts or leases for more than \$3,000 per year *with the state* must disclose any interest they may have in the contracting or leasing organization.

¶4 (Emphasis added). The language of the statute is broader than this, in that it talks about contracts “derived from state funds.” But the Legislative Reference Bureau analysis indicates that the statute was aimed at contracts in whose making the state played a role.

¶5 In addition, the statute requires that an official notify both the Ethics Board and “the department acting for the state in regard to such contract.” This reinforces our understanding that the statute contemplates that there be involvement in the contract by a state agency. Finally, the statute gives authority to void a contract, with respect to which an official has failed to give proper notice, to “the department or officer acting for the state in regard to the allocation of state funds from which . . . payment is derived.” Again, the statute contemplates that there be a state agency involved in making payments under the contract.

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the date on which the Ethics Board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

<sup>2</sup> Examples of instances in which a local government is acting as the agent of the state might include a state grant for a specified building project or funds earmarked for a specified human services program.

¶6 When the state provides money to a local government, and does not direct funds to a specific purpose, those funds can no longer appropriately be characterized as state funds; they have become the local government's funds, and no state agency is involved in making the contract or making payments under the contract.

¶7 Thus, the Board advises:

- 1) That you notify the Ethics Board and the appropriate state agency before entering a contract with a local Wisconsin government in which the local government is acting as the state's agent; and
- 2) You need not provide notification to anyone if the contract is paid from shared revenues or other funds the state provides the local government over which the state has ceded control.

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