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**2006 Wis Eth Bd 03**  
**IMPROPER USE OF OFFICE**

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A legislator should not take official action that has a fiscal effect on a private organization on whose board of directors the legislator serves unless the legislator's appointment to the organization's board were pursuant to a statute, a resolution of the Legislature, or a condition imposed by the State of Wisconsin that established the legislator's role as an agent of our state's government representing governmental interests, not the separate interests of the organization.

¶1 You are a member of the Legislature. You ask whether you may take official action that has a fiscal effect on a private not-for-profit organization that receives significant funding from the State of Wisconsin. You are a member of the organization's board of directors.

¶2 The Ethics Board recommends that you not, in a governmental capacity, act on a matter that will affect the organization's financial interests while you simultaneously serve as a director of the organization *unless your service on the organization's board is pursuant to a statute, a resolution of the Legislature, or a condition imposed by the State of Wisconsin*. Here's why.

¶3 *Wisconsin Statutes* prohibit a state public official to act, in a governmental capacity, on a matter in which an organization with which the official is associated has a substantial financial interest. §19.46 (1) (a), *Wisconsin Statutes*. An official is "associated" with an organization if the official is a director of that organization. §19.42 (2), *Wisconsin Statutes*.

¶4 This statutory restraint applies when the official's affiliation is in the official's private capacity. The Ethics Board has recognized that the foregoing restraint is not applicable when a government names an official to an organization's board of directors to further and to protect governmental interests separate from the private organization's other interests.

¶5 The Ethics Board has had many occasions to advise state officials not to act, in their governmental capacities, on matters affecting private organizations with which the officials were associated; however, your question is the first to raise the issue in a context in which your affiliation with the private organization is arguably in furtherance of the state's interests. The Ethics Board has had an opportunity to address the issue in the context of a local official's appointment to an organization's board of directors:

[A] local official appointed pursuant to state statute, or local ordinance or resolution, to represent the local unit of government and its interests on a board of directors of an organization, does not thereby become associated with that organization. A local elected official appointed in this circumstance serves in a representational, and not an individual, capacity. It appears to be the local unit of government that has a seat on the board of directors by virtue of the governing law; not the individ-

ual filling that seat. Indeed, it is our understanding that a local governmental unit would appoint an individual to an organization's board of directors to protect its interests, and not simply to serve the organization.

1996 Wis Eth Bd 9, ¶9.

¶6 If your appointment to the organization's board were pursuant to a statute, a resolution of the Legislature, or a condition imposed by the State of Wisconsin that established your role as an agent of our state's government representing governmental interests, not the separate interests of the organization, then you may and should vote on governmental matters affecting that organization; otherwise, you should not.

¶7 We are unaware of the State of Wisconsin's directing or authorizing a legislator or other governmental official to serve on the organization's board of directors as an agent of the State of Wisconsin. On the other hand, we observe that legislators' service on that board is of long-standing and that the leaders of both houses of the Legislature have countenanced the practice by designating legislators to serve on that board. The Legislature's intention is ambiguous.

¶8 This is an area that the Legislature may want to address. Until then, a conservative and appropriate method of your dealing with that ambiguity would be that you refrain from acting, as a state official, on matters affecting the organization's financial interests.

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