
2007 Wis Eth Bd 04
POST EMPLOYMENT

¶1 The Ethics Board advises that, because a former agency head did not participate in a proceeding, contract, claim, or charge involving the legality of a company's business practice, the Ethics Code does not restrict the former official's accepting compensation for preparing to testify about the agency's determination that the company's business practice did not violate Wisconsin law.

Facts

¶2 This opinion is based upon these understandings:

- a. You served as the head of a state agency for several years.
- b. While heading the agency, you met with representatives of a company regulated by the agency to discuss the legality of a proposed business practice.
- c. The company's representatives met with you to inform you of the practice and to apprise you that regulators in another state were questioning that practice.
- d. As a result of your meeting, you determined that the company's practice did not violate any Wisconsin statute or regulation within the jurisdiction of your agency.
- e. There was no written follow-up with the company and the agency initiated no action of any sort.
- f. The company has now asked that you appear as a fact witness in a class action suit alleging that the company's business practice violated Wisconsin laws.
- g. The company has offered to pay you for your time in preparing your testimony.

Questions

¶3 The Ethics Board understands your question to be:

Consistent with statutes the Ethics Board administers, may the company pay you for your time in preparing your testimony on its behalf concerning your prior meeting with the company's

representatives and belief as agency head that the company's business practice did not violate Wisconsin law?

Discussion

¶4 The provision of the Ethics Code applicable to your question is found in §19.45 (8) (c), *Wisconsin Statutes*. That statute imposes certain post-employment restrictions on former state public officials. It provides:

19.45 Standards of conduct; state public officials. (8) Except in the case where the state public office formerly held was that of a legislator, legislative employee under s. 20.923(6)(f), (g) or (h), chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employee occupying the position of auditor for the legislative audit bureau:

* * *

(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

¶5 As a former agency head, you are a former state public official covered by these provisions.

Section 19.45 (8) (c) restricts a former official from acting, for pay, on behalf of any party other than the state "in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official."

¶6 Your meeting with company representatives at their request to learn about the company's business practice was not a "proceeding, contract, claim, or charge" in which you participated. It appears to have been simply one informational meeting. You were not asked to, and did not, resolve any legal issue. You were not asked to, and did not, take any action or make any decision. The meeting did not lead to any follow-up.

Advice

¶7 The Ethics Board advises that, because you did not participate in a proceeding, contract, claim, or charge involving the legality of the company's business practice, the Ethics Code does not restrict your accepting compensation for preparing to testify about your office's determination that the company's business practice did not violate Wisconsin law.

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