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**2007 Wis Eth Bd 13**  
**POST EMPLOYMENT**

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The Ethics board advises:

A former state official may not for compensation act on behalf of an organization other than the State of Wisconsin in connection with a federal agency's resolution of a matter in which the official personally and substantially participated in negotiations on behalf of the official's former agency to resolve the matter. This is so even if the official redirects the compensation or the compensation is paid directly to the official's employer or to any other individual or organization.

Facts

- ¶1 We base this opinion upon these understandings:
- a. You served as the head of a state agency.
  - b. You are licensed to practice law in Wisconsin.
  - c. During the time you served as an agency head, a dispute arose between an organization and your agency over the application of a federal law.
  - d. On your agency's behalf, you participated personally in negotiations with the organization and with the federal agency that administers the federal law to resolve the dispute.
  - e. As a result of the negotiations in which you personally and substantially participated, your agency and the organization signed an agreement resolving the dispute between them.
  - f. Recently, the federal agency proposed a final resolution of the dispute.
  - g. Your former agency has expressed support for part of the proposed resolution, but has expressed opposition to some aspects.
  - h. The organization wants to retain you to share your recollections about the earlier negotiations and negotiation process.
  - i. We understand that the organization may want to use your recollections to bolster its position in its current disagreement with your former agency over the proposed resolution.

- j. We further understand that the organization may ask you to participate, on its behalf, in discussions with the federal agency that has proposed the final resolution of the matter.
- k. The organization proposes to pay you on an hourly basis for the time you spend reviewing the files related to the prior negotiations.
- l. You propose to donate the fee that the organization has proffered to your employer which is a non-profit organization.

### Question

¶2 The Ethics Board understands your question to be:

May you, for compensation paid to your employer, act on behalf of the organization in connection with the federal agency's proposed resolution of the dispute?

### Discussion

¶3 The provision of the Ethics code that applies to your question is §19.45 (8) (c), *Wisconsin Statutes*. Reduced to its elements, that section provides:

- No former state public official
- May for compensation
- Act on behalf of any party other than the State of Wisconsin
- In connection with any quasi-judicial proceeding or application
- 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.<sup>1</sup>

¶4 Each of the elements of the statute is present:<sup>2</sup>

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<sup>1</sup> Section 19.45 (8) (c), *Wisconsin Statutes*, provides:

**19.45 (8)** Except in the case where the state public office formerly held was that of legislator, legislative employee under s. 20.923 (6) (bp), (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.

<sup>2</sup> The Legislative Reference Bureau analyzed this provision of the Ethics Code in 1977 Assembly Bill 349. The Bureau's analysis describes the restriction in §19.45 (8) (c) as providing that "former state officials may never represent a party *opposing the state* for pay in a matter in which they were involved personally and substantially during their employment." (Emphasis added). The statute is written more broadly to prevent a former official from taking part at all in a proceeding in which the individual was previously involved as an official. 1996 Wis Eth Bd 16, ¶10.

- You are a former state public official.
- By your own account, you participated personally in the very matter about which you have asked. Your participation appears to have been substantial.<sup>3</sup>
- The federal agency's consideration of the organization's application for a resolution of the matter is a quasi-judicial proceeding that involves the application of policy to a set of facts, not the creation of policy as in a quasi-legislative proceeding.
- Presumably, the federal agency's determination could give rise to judicial review.
- The organization is seeking your potential participation in the matter on its behalf.
- For your assistance, the organization proposes to furnish compensation either directly to your employer or to you for your re-direction to your employer. The compensation's beneficiary, whether you or another, is immaterial to the statute's application.<sup>4</sup>

### Advice

¶5 The Ethics board advises:

You may not for compensation act on behalf of the organization, or any other person or organization other than the State of Wisconsin in connection with the federal agency's resolution of the matter. This is so even if you redirect the compensation or the compensation is paid directly to your employer or to any other individual or organization.

You should also account for Wisconsin Supreme Court Rules, including SCR20:1.9.  
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<sup>3</sup> We presume that if your participation had been nominal or inconsequential, the organization would not now be seeking your recollections of the negotiations.

<sup>4</sup> More than two decades ago, we noted: "An official obtains a payment for personal use even if the official later directs the payment to a third party. The test is whether the official in his or her private capacity exercises control or direction over the payment's disposition." See 9 Op. Eth. Bd. 21, 22 (1986); 1 Op. Eth. Bd. 137, 138 (1978). Section 19.45 (8) (c)'s may prevent a former state public official from acting on behalf of any party other than the State of Wisconsin if, for the former official's action, a party furnishes compensation to anyone, even if the beneficiary is selected without consultation with or concurrence of the former official.