
2008 GAB 01
REPRESENTATION OF CLIENTS

The Government Accountability Board advises that a legislator continue the practice of not communicating with state agencies on behalf of special purpose districts that the legislator represents and that the legislator refer questions from department employees to other representatives of the districts who are not state public officials.

Facts

¶1 You are a member of the legislature and a lawyer in private practice. One of the main aspects of your practice is to represent local special purpose districts. At times, a state agency may have questions about the district. At other times, a district may request funding from a state agency. You have indicated that you have made a practice of not communicating with the employees of these departments in these matters.

Question

¶2 You ask how laws administered by the Government Accountability Board restrict your dealings with employees of these state agencies on behalf of the local special purpose districts that you represent.

Discussion

¶3 Section 19.45 (7), *Wisconsin Statutes*, provides:

(7) (a) No state public official who is identified in s. 20.923 may represent a person for compensation before a department or any employee thereof, except:

1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or
2. At an open hearing at which a stenographic or other record is maintained; or
3. In a matter that involves only ministerial action by the department; or
4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

¶4 Legislators are state public officials identified in §20.923 (2) (b), *Wisconsin Statutes*, so this provision applies to you. You receive compensation from your clients. It does not appear that any of the exceptions in the statute apply to the types of matters about which you have asked. The issue, then, is whether communicating on behalf of a client in connection with regulatory activities of a state agency or grant-making by a

state agency is representing a person before a department or employee thereof. The answer is “yes.”

¶5 By its terms, the statute clearly includes legal representation.¹ The statute’s bar appears to serve two purposes: (1) it prevents a state official from bringing undue pressure to bear on agencies and employees over whom the official may have budgetary or other authority and (2) it forecloses even the appearance of impropriety in an official being compensated because of the official’s stature or position. There is nothing in the language of the statute to suggest that the words, “represent before” should be read narrowly to apply only to an appearance in a formal proceeding. Thus, we agree with the consistent interpretation of the Ethics Board that “represent before” includes an official’s writing, telephoning, visiting, bargaining or negotiating with, or otherwise coming under a department’s consideration.²

Advice

¶6 The Government Accountability Board advises that you continue your practice of not communicating with state agencies on behalf of special purpose districts that you represent and that you refer questions from department employees to other representatives of the districts who are not state public officials.

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¹ 1998 Wis Eth Bd 3, ¶5; 4 Op. Eth. Bd. 89 (1981); 4 Op. Eth. Bd. 77 (1981).

² 1998 Wis Eth Bd 3, ¶6; 9 Op. Eth. Bd. 45, 47 (1987) (“Representation’ embraces a concept much broader than legal representation. A salaried state public official should not write, telephone, or visit an officer or employee of a state entity in connection with his work for the proposed business except in the narrowly-defined circumstances authorized by 19.45(7).”).