
2008 GAB 02 DISQUALIFICATION

The Government Accountability Board advises that a legislator who is a lawyer may participate in the consideration and vote on a resolution which is a proposed constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for legal services for the indigent.

Facts

¶1 You are a member of the legislature and a lawyer. Currently, the Wisconsin Supreme Court requires lawyers licensed in Wisconsin to pay an annual assessment of \$50.00 to provide legal services to the indigent. Before the Assembly for consideration is 2007 Assembly Joint Resolution 30. This Joint Resolution is a proposed constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for such legal services.

Question

¶2 You ask whether laws administered by the Government Accountability Board restrict your participation in the consideration and vote on Assembly Joint Resolution 30.

Discussion

¶3 The provision of Wisconsin's Ethics Code that is most pertinent to your question is §19.45 (2), *Wisconsin Statutes*.¹ This section, reduced to its elements, provides that:

No state public official
may use his or her public position or office
to obtain financial gain or anything of substantial value
for the private benefit
of the official.²

¶4 You are a state public official by virtue of being a member of the Legislature.³ For many years, the Ethics Board defined "substantial value" as anything of more than

¹ Section 19.46 (1), *Wisconsin Statutes*, does not apply. This provision, which more broadly prohibits an official from taking any official action substantially affecting a matter in which the official has a substantial financial interest, does not "prohibit a state public official from taking official action with respect to any proposal to modify state law." §19.46 (2), *Wisconsin Statutes*.

² Section 19.45 (2), *Wisconsin Statutes*, provides:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

token or inconsequential value.⁴ We see no reason to depart from this understanding. We conclude that \$50 is not a nominal or inconsequential amount.⁵ Assembly Joint Resolution 30 would create a direct, measurable financial benefit for you. Nevertheless, you may participate in its consideration.

¶5 The Ethics Code, at §19.45 (1), *Wisconsin Statutes*, provides, in relevant part:

19.45 Standards of conduct; state public officials. (1) . . . The legislature . . . recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; . . .that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

¶6 In recognition of this statutory policy, the Ethics Board consistently held that, even if an official has a substantial financial interest in a legislative matter, the official may still participate in the matter's consideration, as long as:

- A. The official's action affects a whole class of similarly-situated interests;
- B. The official's interest is insignificant when compared to all affected interests in the class; and
- C. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class.⁶

¶7 The Ethics Board developed this test in recognition that the law favors an official's exercise of the official's public duties. As the Attorney General has put it, "A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner."⁷

³ Section 19.42 (13) (c), *Wisconsin Statutes*.

⁴ See, e.g., 2007 Wis Eth Bd 05; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

⁵ A good rule of thumb is that an amount of money or an item or service has substantial value if a reasonable person would care about retaining it.

⁶ See, e.g., 2007 Wis Eth Bd 10; 1992 Wis Eth Bd 22 ¶6-8; 1990 Wis Eth Bd 20 ¶4; 9 Op. Eth. Bd. 45 (1987); 8 Op. Eth. Bd.38 (1985); 5 Op. Eth. Bd. 90 (1982); 4 Op. Eth. Bd. 104 (1981).

⁷ 36 Op Att'y Gen 45 (1947). See also *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879).

¶8 We adopt this test. We further believe that your interest in the subject of the Joint Resolution is insignificant when compared to the entire class of 15,000 licensed Wisconsin lawyers all of whom would be equally affected by the proposal.

Advice

¶9 The Government Accountability Board advises that you may participate in the consideration and vote on 2007 Assembly Joint Resolution 30.

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