
1992 Wis Eth Bd 17
LOCAL OFFICIALS-IMPROPER USE OF OFFICE

A law firm should not purchase meals for officials of the local units of government the firm represents (nor should a local public official accept) unless, and only to the extent that, the local government would otherwise bear the official's expense and the governmental units' obligation to bear the expense is expressly authorized by, and in accordance with, established written criteria. OEB 92-17

April 27, 1992

Facts

[1] This opinion is based upon these understandings:

- a. Your law firm represents local units of government in connection with collective bargaining negotiations, grievance arbitration hearings, and other types of administrative hearings.
- b. Local public officials participate in these negotiations and hearings in their official capacity.
- c. The negotiations and hearings occur at or near mealtimes.
- d. It is convenient to discuss the ongoing proceedings over a meal.

Questions

[2] The State of Wisconsin Ethics Board understands your questions to be:

1. May your law firm purchase meals for local public officials in connection with collective bargaining negotiations, grievance arbitration hearings, and other types of administrative hearings at which discussions concerning the ongoing legal proceedings take place?
2. Does "local public official" refer to officials other than elected officials?

Discussion

[3] The provision of the Ethics Code most pertinent to your first question is §19.59(1)(a), *Wisconsin Statutes*. Reduced to its pertinent elements, this section provides:

No local public official
May use his or her public position or office to obtain
Financial gain or anything of substantial value
For private benefit.¹

Your question presumes that the individuals about which you ask are local public officials.

[4] The relationship between your law firm and the local public officials arises from the officials' public positions and the circumstances are unrelated to any private or business association.

[5] The meal expenses about which you have asked are probably substantial as contrasted with something of only nominal or insignificant value.²

[6] The question then is whether the benefit realized from the payment of the meal expense is of private benefit to the officials or of public benefit. If the expense would otherwise be borne by the local government, then the benefit of the law firm's transferring the expense from the local government to the law firm would benefit the public; but if the local government would not pay the costs directly or reimburse the official for his or her out-of-pocket costs, then the public realizes no benefit from the payment on the official's behalf.³

[7] Criteria for determining whether acceptance of an expense is of public, rather than private, benefit include whether there is an established policy for local government reimbursement of the expense and whether past practice establishes such reimbursement. The Ethics Board advises that the better procedure in cases involving the offer of meals or other items to a local official is that the local governmental unit bear the cost initially and that reimbursement be made directly to the governmental unit.

[8] Your second question is of a general nature and asks simply what officials other than elected officials are "local public officials." We refer you to section

¹ §19.59(1)(a), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employes and candidates.

(1)(a) No local 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 paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

² "Substantial" is contrasted with "nominal value" and may be synonymous with "merchantable value." 10 Op. Eth. Bd. 53, 41 (1988); 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982), 73 (1981).

³ See 1992 Wis Eth Bd 09.

19.42 (7u), (7w), and (7x), *Wisconsin Statutes*, for the definition of local public official.⁴

Advice

[9] A law firm should not purchase meals for officials of the local units of government the firm represents (nor should a local public official accept) unless, and only to the extent that, the local government would otherwise bear the official's expense and the governmental units' obligation to bear the expense is expressly authorized by, and in accordance with, established written criteria.

⁴ § 19.42 (7u), (7w), and (7x), *Wisconsin Statutes*, provides:

19.42 Definitions.

(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local government.

(b) A county administrator or administrative coordinator or a city or village manager.

(c) An appointive office or position of a local government in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

(7x) "Local public official" means an individual holding a local public office.