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**1992 Wis Eth Bd 33**  
DISQUALIFICATION; EMPLOYMENT CONFLICTING WITH OFFICIAL  
DUTIES

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A member of a state regulatory board should refrain from participating in any discussions or decisions concerning educational and course requirements for members of the profession regulated by the board while the official serves as a consultant to an organization that sets generally accepted practice standards for the profession and approves educational courses required by many government bodies, and the official should not, in any way, use his or her position to benefit the organization. If these restrictions materially impede the official's ability to fulfill his or her responsibilities as a public official, the official might withdraw from the official's consulting contract or relinquish his or her public position so that another appointee may participate fully in the activities of the board.

OEB 92-33 (December 3, 1992)

Facts

[1] This opinion is based upon these understandings:

- a. You are a member of a State of Wisconsin regulatory board and a state public official.
- b. Part of your duties as a board member is to advise your department on criteria for the approval of educational programs and courses as well as on approval of specific courses for members of the profession regulated by the board.
- c. You have been offered a consulting position with a not-for-profit educational organization established to help educate and improve the profession regulated by the board.
- d. The organization will pay you approximately \$54,000 per year as a consultant, which you estimate will require 1 1/2 days per week of your time.
- e. The organization sets performance standards that are generally accepted as standards of professional practice as well as qualification standards that are required to be met by members of the profession engaged by various federally regulated entities and federal agencies.
- f. Your job as a consultant will be to review and to make recommendations for approval or disapproval by the organization of educational courses for members of the profession.

- g. The organization charges application fees, ranging from \$2,000 to \$6,000, to those seeking course approval from the organization.

### Question

- [2] The Ethics Board understands your question to be:

How, if at all, do statutes administered by the Ethics Board restrict your ability to serve as a consultant to the organization while you are a member of the state regulatory board that oversees the profession that the organization works to improve?

### Discussion

[3] The legislature has specifically recognized that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature and that state public officials may need to engage in employment, or 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. Section 19.45(1), *Wisconsin Statutes*. The Ethics Code “does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to the state.” *Id.*

[4] By the same token, a public officer owes an undivided duty of loyalty to the public whom he or she serves and should avoid placing himself or herself in a position in which a conflict of interest might arise.<sup>1</sup> As a general matter, occasional and infrequent conflicts may be dealt with by abstaining from participation. Continuing and frequent conflicts might best be dealt with by divesting the private interest.

[5] Several provisions of the Ethics Code are pertinent to situations that may arise as a result of your serving as a member of the board while holding a position as a consultant with the organization. Of particular importance are §§19.45(2) and 19.46(1)(b), *Wisconsin Statutes*. Those sections provide:

#### **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. . . .

**19.46 Conflict of Interest Prohibited; Exception. (1)** [N]o state public official may:

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<sup>1</sup> 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

[6] Your duties as a member of the board include participating in an advisory capacity to the board's department in rulemaking to establish criteria for the approval of educational programs and courses and advising on specific course approval by the department. This conceivably places you in a position to be able to use your public office to benefit the organization in a number of ways; for example: (1) by advocating that course approval by the organization be a prerequisite for state approval; (2) by advocating that organization-approved courses be automatically approved; (3) by advocating approval of specific courses approved by the organization; or (4) by advocating against approval of courses not approved by the organization.

[7] You have indicated that you will not participate in any discussion or decision concerning the approval by the board of specific professional courses for the State of Wisconsin. We believe that that is a sound course of action.<sup>2</sup> We also advise that you not participate in any discussion or decision concerning rules or general policy establishing educational course requirements or criteria for approval of specific courses unless you can demonstrate that the rules or policy will not benefit or affect the organization's programs.<sup>3</sup> If these restrictions materially impede your ability to fulfill your responsibilities as a public official, you might withdraw from your consulting contract or relinquish your public position so that another appointee may participate fully in the activities of the board.

#### Advice

[8] The Ethics Board advises that you refrain from participating in any discussions or decisions concerning educational and course requirements for members of the profession while you serve as a consultant to the organization and that you not, in any way, use your position to benefit the organization. If these restrictions materially impede your ability to fulfill your responsibilities as a public official, you might withdraw from your consulting contract or relinquish your public position so that another appointee may participate fully in the activities of the board.

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<sup>2</sup> See 2 Op. Eth. Bd. 97 (1979); 2 Op. Eth. Bd. 75 (1978).

<sup>3</sup> See, e.g., 11 Op. Eth. Bd. 9 (1989).