
1994 Wis Eth Bd 1
SOLICITATION; IMPROPER USE OF OFFICE;
OFFICERS, DIRECTORS, AND MEMBERS OF ORGANIZATIONS;
LOBBYING AND LOBBYISTS

A state public official may use his or her official letterhead to solicit contributions on behalf of a not-for-profit organization with which the official has no other connection. The solicitation should be structured so that it is evident that a contribution would be unlikely to influence the official's judgment. It would be unreasonable for anyone to believe the official's judgment would be influenced if the identities of who contributes and who does not are unknown to the official. The solicitation letter may not be sent to lobbyists or lobbying principals. OEB 94-1 (February 21, 1994)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a state public official under the Ethics Code and an agency official under the lobbying law.
 - b. You have been asked to sign a letter on your official letterhead soliciting membership on behalf of a private not-for-profit organization.
 - c. You are neither an officer nor director of the organization nor do you have any other connection with it.

Question

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

What restraints, if any, do laws administered by the Ethics Board place on your ability to send the fundraising letter?

Discussion

Several sections of the Ethics Code are pertinent to the question you have asked.

Use of Office for Gain

[3] Sections 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*, apply to the circumstances about which you have asked. Reduced to its elements, 19.45(2) provides:

No state public official
May use his or her office or position
To obtain financial gain or anything of substantial value
For the benefit of an organization with which the official is associated;¹

[4] and 19.46(1)(b) provides:

No state public official
May use his or her public position
In a way that produces a substantial benefit
For an organization with which the official is associated.²

[5] The Ethics Board consistently has found that use of public position includes use of the position's title or prestige and that the restrictions apply to soliciting even for charitable organizations with which the official is associated.³ The important issue then is whether the organization is one with which you are "associated."

[6] The Ethics Code provides that:

"Associated," when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

§19.42(1), *Wisconsin Statutes*.

[7] Your only connection with the organization is its request that you send out a fundraising letter on its behalf. If you are associated with the organization, it would be because you are its authorized representative or agent. This

¹ §19.45(2), *Wisconsin Statutes*, provides:

19.45(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.

² §19.46(1)(intro.) and (b), *Wisconsin Statutes*, provides:

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(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.

³ E.g., 1991 Wis Eth Bd 06; 10 Op. Eth. Bd. 47 (1988), 43 (1987); 9 Op. Eth. Bd. 45 (1987), 21 (1986).

last part of the definition of "associated" was added by 1991 Act 269, the budget bill. Ordinarily, in interpreting statutes, words are to be given their plain meaning. *See* §990.01(1), *Wisconsin Statutes*; *Wisconsin v. Williquette*, 129 Wis. 2d (1986). However, when a statute is capable of being understood by reasonably well-informed persons in two or more different senses, the statute is ambiguous and one must look to legislative intent. *Ervin v. City of Kenosha*, 159 Wis. 2d 464 (1991); *McLeod v. Wisconsin*, 85 Wis. 2d 787, 792 (Ct. App. 1978).

[8] In our view, the language of the statute with which we are dealing is ambiguous. For example, an authorized representative or agent could be understood to mean any individual who is asked to do something by a person and who acts pursuant to that request or it could mean only an individual generally empowered to act for a person under concepts of the law of agency. There is no legislative history or other information that helps explain what the legislature meant by "authorized representative or agent." But we think the legislature intended that it mean something more than helping out an organization by agreeing to sign a fundraising letter on its behalf.

[9] Signing a fundraising letter to be sent out by an organization does not in itself suggest that one is authorized to represent the organization in any of its other dealings or to act on its behalf in any way that would bind it. An interpretation of the new language that would mean that any official acting in any way at the behest of an organization is associated with that organization would result in a profound departure from prior law. It could bar any public official from sponsoring a fundraising event or appearing as signatory on a fundraising letter simply because the official was asked to do so. The Board does not believe that the legislature intended that result or that such a reading is warranted either from the language of the statute or by a clear expression of legislative intent.

[10] The Board believes that you have not become associated with the organization merely by its request to you that you send a letter on its behalf soliciting membership in the organization and that the restrictions of §§19.45(2) and 19.46(1)(b) do not apply.

Solicitations Influencing Judgment

[11] Section 19.45(3), *Wisconsin Statutes*, also applies to the situation you have presented. That section prohibits your solicitation of anything of substantial value where the response to the solicitation could reasonably be expected to influence your official judgment or actions.⁴ This provision establishes an objective, rather than a subjective, standard. Thus, you should not solicit from individuals, businesses or organizations that have an interest in matters in which you may become involved unless the solicitation response is structured so that you are not reasonably likely to be influenced by responses to the solicitation. This can be done by asking only for

⁴ §19.45(3), *Wisconsin Statutes*, provides:

relatively small contributions or by ensuring that you remain unaware of individual responses to the solicitation.

[12] Whether a solicitation is reasonably likely to influence judgment is a question that can only be answered based on the totality of the circumstances. In this instance, given the distant relationship between the work of the organization and issues likely to come before you as a state official and assuming that you do not have an interest in, or knowledge of, individual responses, §19.45(3) does not restrict your ability to sign the proposed solicitation letter.

Soliciting from Lobbyists and Lobbying Principals

[13] Finally, §13.625(3), *Wisconsin Statutes*, prohibits you from soliciting anything of pecuniary value from a lobbyist or an organization that employs a lobbyist.⁵ This restriction applies whether you solicit on behalf of yourself or another.

Advice

[14] The Ethics Board advises that a state public official may use his or her official letterhead to solicit contributions on behalf of a not-for-profit organization with which the official has no other connection. The solicitation should be structured so that it is evident that a contribution would be unlikely to influence the official's judgment. It would be unreasonable for anyone to believe the official's judgment would be influenced if the identities of who contributes and who does not are unknown to the official. The solicitation letter may not be sent to lobbyists or lobbying principals.

19.45(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

⁵ §13.625(3), *Wisconsin Statutes*, provides:

13.625(3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (4), (5), (6), (7), (8) and (9). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1) (b) 3 and (c), (2) and (6).