
1994 Wis Eth Bd 6 Supplement
LOCAL CODE; DISQUALIFICATION; EMPLOYMENT CONFLICT
ING WITH OFFICIAL DUTIES; IMPROPER USE OF OFFICE

A member of the governing body of a local governmental unit should not participate (1) in labor issues in which a union that is a client of the member's law firm, or one of that union's members, is a party or (2) in labor matters involving other unions that could have a precedential effect on issues affecting the client. The board member may participate in other policy matters as long as those matters have no more than an incidental effect on the union and its members. OEB-94-6 Supplement (December 28, 1994)

Facts

[1] This opinion is based upon the facts set out in the Ethics Board letter dated December 22, 1994, with the following differences:

- a. The union that represents employees in the local government unit will soon be *affiliated with* the union that is a client of the member's law firm.
- b. Under the terms of the affiliation, the local union will retain the ability to represent the employees in collective bargaining and to select its own attorneys.

Questions

[2] The Ethics Board understands your question to be whether these facts change the Ethics Board's prior opinion in any way.

Discussion

[3] As we indicated in our earlier opinion, section 19.59, *Wisconsin Statutes*, applies to the situation about which you have asked. That statute generally prohibits a local public official: (1) from using his or her office to obtain anything of substantial value or a substantial benefit for the official or for the benefit of an organization with which the official is associated; (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest; or (3) from accepting anything of value if it could reasonably be expected to influence the local public official's vote, official actions, or judgment.¹ An elected member of a local government unit's governing board is a local public official subject to §19.59.²

¹ Section 19.59(1)(a), (b), and (c), *Wisconsin Statutes*, provides:

[4] The different facts that you have presented do not affect the Board's analysis. Under the terms of the affiliation you have described, employees of the local government will become dues paying members of the union that is a client of the member's law firm. Indeed, the existing union and its members will become part of the new union in a way that appears similar to that in which union locals are part of a larger union. The major difference between a merger of the two unions and the affiliation appears to be that the local union will retain a separate identity, rather than being entirely subsumed within the new union.

[5] *Influencing Judgment*

It seems patent that the board member's interest in his or her law firm's success, and that firm's representation of the union, could reasonably be expected to influence the member's judgment in matters affecting the union and its members. The Ethics Code provides that a local public official may not accept anything of value if the member's judgment could reasonably be expected to be influenced thereby. In similar situations, the Board has advised that an official either give up the private interest or refrain from participation in the public arena.³ While we cannot say that the member's participation in every decision affecting the local governmental unit's employees would necessarily violate the Ethics Code, the Code's policy of fostering confidence in government suggests that, as long as the member remains with his or her law firm, the member refrain from decisions affecting

19.59 Codes of ethics for local government officials, employees 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.

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local 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 local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. 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.

² See 19.42(7u) (7w) and (7x), *Wisconsin Statutes*.

³ 1994 Wis Eth Bd 07; 1994 Wis Eth Bd 05.

union members unless the effect on the union and its members is not significant.⁴

[6] *Duty of Undivided Loyalty*

A public officer owes a duty of undivided 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.⁵ Here, the school board member owes a duty of undivided loyalty to the local governmental unit while his or her firm owes a duty of loyalty to the labor union. Clearly, the union's interests and the government's interests do not always coincide and, indeed, may be antagonistic to each other. In these circumstances, a conflict of loyalties is inherent.

The Board's view in this matter is strengthened by similar strictures in the Supreme Court's Rules of Professional Conduct for Attorneys. Those Rules prohibit an attorney from representing a client if the representation "may be materially limited by the lawyer's responsibility to another client or to a third person"; and the Rules apply the same conflicts analysis whether the client is an attorney's or a client of the attorney's law firm. *See* SCR 20:1.7; SCR 20:1.10; E-86-12. In *In the Matter of Disciplinary Proceedings Against Walsh*, 183 Wis. 2d 437 (1994), the Wisconsin Supreme Court recently held that an attorney violated these Rule provisions by representing a County in a disability claim proceeding while the attorney's firm represented the disability claimant as a defendant in another matter.⁶ *Walsh* presents facts analogous to the situation you have asked about.

[7] *Official Actions*

The Ethics Board has, in the past, recognized a distinction between an official's participation in quasi-judicial matters and quasi-legislative matters. The Board has advised that an official not participate in quasi-judicial deci-

⁴ The Ethics Code also provides that a local public official may not act on a matter in which an organization with which the official is associated has a substantial financial interest. Regardless of the structural relationship outlined in the affiliation agreement, the school board member's law firm represents the very union to which the local government unit's employees will belong. That member will be called upon to participate in official decisions that will directly and substantially affect his or her law firm's client and its members. The member's law firm has a clear financial interest in keeping its clients. Making decisions that directly affect the union and its members could affect that interest. In such circumstances, the board member will be continually confronted by issues in which the member's participation invites examination of the member's conduct under the Ethics Code. Admittedly, it is hard to know how, or if, a particular decision will affect the law firm's retention of the union as a client. However, as long as the board member participates only in those matters in which the potential effect of a decision on the union and its members is not significant, he or she is likely to avoid problems.

⁵ 1992 Wis Eth Bd 26; 1992 Wis Eth Bd 33, 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

⁶ Of course, irrespective of whether the Code of Professional Responsibility's prohibitions may be waived, the Ethics Code's prohibitions may not.

sions, such as a grant, award, or sanction involving an organization of which an official's firm is a paid representative.⁷

The Board has also advised that an official not participate in quasi-legislative matters, such as promulgating a rule or issuing for broad application an order, interpretation, or policy, affecting a client of the official's firm, unless: (1) the action affects the whole class of similarly situated organizations; (2) the client's presence in the class is insignificant when compared to the number of members of the class; and (3) the action's effect on the client is not significantly greater or less than upon other class members.⁸ Because the teachers' union is so large, policy decisions involving matters affecting the union or its members are unlikely to meet this test.

Therefore, the board member about whom you have asked should not participate (1) in labor issues in which the union or a union member is a party and (2) in labor matters involving other unions that could have a precedential effect on union issues. The board member may participate in other policy matters involving governmental issues as long as those matters have no more than an incidental effect on the union and its members.

Advice

[8] The Ethics Board advises that a member of the governing body of a local governmental unit should not participate (1) in labor issues in which a union that is a client of the member's law firm, or one of that union's members, is a party or (2) in labor matters involving other unions that could have a precedential effect on issues affecting the client. The board member may participate in other policy matters as long as those matters have no more than an incidental effect on the union and its members.

⁷ See 10 Op. Eth. Bd. 13 (1988).

⁸ *Id.*; 8 Op. Eth. Bd. 33 (1985), 21 (1984); 5 Op. Eth. Bd. 89 (1982), 59 (1981).