
1994 Wis Eth Bd 9
LOBBYING, IMPROPER USE OF OFFICE;
FEES AND HONORARIUMS; LEGISLATORS

An elected state official may accept compensation for participating as a commentator on state government issues on a weekly television program as long as the company that owns the television station operates independent of its corporate parent, which is a lobbying principal. Unless an official has evidence to the contrary, he or she may rely on the television stations's representation that in asking the official to appear on the television program it has not acted in consultation or cooperation with, or at the request or suggestion of, the parent company that is a principal. (OEB94-9) October 24, 1994

Facts

- [1] This opinion is based upon these understandings:
- a. You are an elected state official.
 - b. You are a regular commentator on topics concerning Wisconsin politics on a weekly television program.
 - c. The television station is owned by a company that is itself a wholly owned subsidiary of another company that is a registered lobbying principal.
 - d. The television station has offered to compensate you for your appearances on the television program at \$75 per-appearance, the same rate at which it compensates other commentators that appear on the program.

Questions

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

Do laws administered by the Wisconsin Ethics Board restrict your ability to accept compensation from the television station for your participation in the television program?

Discussion

- [3] As an elected state official, you are subject to both Wisconsin's lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, and Ethics Code for Public Officials and Employees, Ch. 19, subch. III, *Wisconsin Statutes*. Based on an

examination of both statutes, we advise that you may accept the compensation offered you for your participation on the program.

Lobbying Law

[4] Section 13.625, *Wisconsin Statutes*, provides that no lobbying principal may furnish to an elective state official, and no elective state official may accept from a principal, anything of pecuniary value.¹ This prohibition applies whether or not an official furnishes items or services of equivalent value in exchange.²

[5] A “principal” means any person who employs a lobbyist. §13.62(12), *Wisconsin Statutes*. Under general statutory provisions, a “[p]erson” includes all partnerships, associations and bodies politic or corporate.” §990.01(26), *Wisconsin Statutes*. If the company that owns the television station were itself a principal, you could not accept compensation for participating on the television program. Here, that company does not employ a lobbyist but it is wholly-owned by a company that does. Although a principal may not furnish items or services through an agent or intermediary that it may not furnish directly,³ the television station may compensate you without restriction from the lobbying law as long as it is acting independently and not merely as the alter ego of the parent company. Unless you have evidence to the contrary,

¹ Section 13.625, *Wisconsin Statutes*, in relevant part, provides:

13.625 Prohibited practices. (1) No lobbyist may:

* * *

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe's or candidate's personal campaign committee:

1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value, except that a lobbyist may make a campaign contribution to a partisan elective state official or candidate for national, state or local office or to the official's or candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

* * *

(2) No principal may engage in the practices prohibited under sub. (1) (b) and (c). This subsection does not apply to the furnishing of transportation, lodging, food, meals, beverages or any other thing of pecuniary value which is also made available to the general public.

(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).

² 80 Op. Atty. Gen. 205 (1992) (§13.625 does not allow fair value compensation of services by a principal to an official covered by the lobbying law); 77 Op. Atty. Gen. 160 (1988).

³ See, e.g., 1992 Wis Eth Bd 29; 1992 Wis Eth Bd 27.

you may rely on the television station's representation to you that in asking you to appear on the television program it has not acted in consultation or cooperation with, or at the request or suggestion of its parent company.⁴ We suggest that such representation be in writing. If the television station is not able to make that representation, or if you have any evidence to the contrary, you should decline the compensation.

Ethics Code

[6] The Ethics Code 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 private benefit.⁵ The Ethics Board has long held that this prohibition includes the use of the status or prestige of office to obtain private employment.⁶ It seems likely that your employment as a political commentator on the television program in question arises, at least in part, from your position as an elected state official. However, even if this is so, the Ethics Code, §19.56(3), *Wisconsin Statutes*, specifically provides that, notwithstanding the general prohibition, "an elected official may retain reasonable compensation . . . for the presentation of a talk" related to the discussion of state governmental processes, proposals and issues. In our view, this exception applies equally to talks and panel discussions presented on television as well as to live audiences. Moreover, a payment of \$75, which is the amount paid other commentators who are not state public officials for appearing on the program appears reasonable.⁷

Advice

[7] The Ethics Board advises that you may accept compensation for participating as a commentator on state government issues on a weekly television program, as long as the company that owns the television station operates independently of its corporate parent, which is a lobbying principal. Unless you have evidence to the contrary, you may rely on the television

⁴ Cf. §11.06(7), *Wisconsin Statutes*, concerning the test for determining whether a political disbursement is an independent expenditure.

⁵ 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.

⁶ See, e.g., 1994 Wis Eth Bd 02; 10 Op.Eth. Bd. 19 (1988); 9 Op. Eth. Bd. 45 (1987); 9 Op. Eth. Bd. 21 (1986); 8 Op. Eth. Bd. 61 (1985); OEB 87 (May 13, 1977).

⁷ A payment's reasonableness is determined by the totality of the circumstances, including: (1) the payer's relationship to an official; (2) the amount of preparation required for the presentation; (3) the amount of compensation paid to other participants; (4) the relative importance of the presentation; and (5) the official's history of commanding speaking fees prior to holding public office. 8 Op. Eth. Bd. 43 (1985).

station's representation to you that in asking you to appear on the television program it has not acted in consultation or cooperation with, or at the request or suggestion of the parent company that is a principal.