
1996 Wis Eth Bd 14
SOLICITATION

A state agency may solicit donations for the agency's gifts and grants account as long as the agency solicits donations only from individuals, businesses, and organizations that do not do business with the agency, are not regulated by the agency, and are neither lobbyists nor lobbying principals. The agency should not use solicited funds for rewarding state public officials. Consistent with statutes administered by the Ethics Board, the agency may use solicited funds to reward other employees for exceptional accomplishment or outstanding performance as long as the use of such funds does not conflict with applicable collective bargaining agreements or with statutes or rules administered by the Department of Employment Relations.
OEB 96-14 (August 7, 1996)

Facts

- [1] This opinion is based upon these understandings:
- a. You are a state public official in a state agency.
 - b. The agency has a gifts and grants account.
 - c. The agency would like to solicit donations from individuals, businesses, and organizations for this account.
 - d. The agency would not solicit donations from those with whom it contracts or to whom it awards grants, or those it licenses or regulates.
 - e. The agency will use the donations to recognize employee achievement.
 - f. The agency will publicize the names of donors to the account.

Questions

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

1. What impediment, if any, do statutes administered by the Ethics Board pose to officials' of a state agency soliciting donations from individuals, corporations, and businesses (other than those to which the agency awards grants or licenses, regulates, or with which it does business) to support the agency's program for recognizing special employee achievement above and beyond normal responsibilities?

2. What impediment, if any do statutes administered by the Ethics Board pose to the agency's acknowledging publicly the donors to this program?

Discussion

[3] Your proposal has two separate aspects: (1) the solicitation of donations; and (2) the use of donations to recognize an employee's work.

Solicitation

[4] The provisions of the Ethics Code and lobbying law that are most pertinent to this aspect of your question are §§19.45(3) and 13.625, *Wisconsin Statutes*. Section 19.45(3) provides:

Standards of conduct; state public officials. (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] Section 13.625(3) provides:

Prohibited Practices. (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 [specifically] permitted . . .

[6] The Ethics Board has held that the prohibitions of §19.45(3) and §13.625 apply whether contributions that are solicited are directed toward the official's own benefit or to the benefit of another. 1995 Wis Eth Bd 7; 1994 Wis Eth Bd 1; 4 Op. Eth. Bd. 93 (1981); 4 Op. Eth. Bd. 51 (1980). The statutory bar extends to the solicitation or acceptance of contributions to a state agency. 1995 Wis Eth Bd 7; 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9

(1986); 7 Op. Eth. Bd. 19 (1983). Moreover, it applies whether a state public official solicits funds personally or through the agency's employees acting at the official's behest.

[7] Section 19.45(3)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer would reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office. 4 Op. Eth. Bd. 93, *supra*; 4 Op. Eth. Bd. 51, *supra*. The Board has said that it is unreasonable to think that an official's actions or judgment would be influenced by contributions given by persons with respect to whom the official's office does not exercise any action at all or only ministerial action or where the contributions are only of modest value. 1992 Wis Eth Bd 23; 7 Op. Eth. Bd. 19 (1983); 4 Op. Eth. Bd. 51, *supra*.¹ Your proposal is to solicit donations only from individuals, businesses, and organizations that do not do business with the agency and are not regulated by the agency. As a result, you are unlikely to run afoul of the provisions of §19.45(3).

[8] Under §13.625 of the lobbying law, once it is established that the parties involved are an agency official and a lobbyist or an organization that employs a lobbyist, no further analysis is required -- the official should not solicit money, either personally or through agency employees acting at the official's behest, from a lobbyist or an organization that employs a lobbyist. Thus, the agency should not solicit donations from lobbyists or lobbying principals.

[9] You have also raised the question whether the agency may selectively solicit donations and publicly acknowledge donors. Neither the Ethics Code nor lobbying law restrict these actions. However, we have recommended that an agency not publicize the name of a donor in such a way as to give the impression that the contribution was made for publicity purposes. 1 Op. Eth. Bd. 27 (1976).

Use of donations to reward employees

[10] Section 19.45(2), *Wisconsin Statutes*, provides:

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

¹ However, the Board has repeatedly advised that state officials not solicit contributions from individuals or entities that are likely to be materially affected by laws or rules which the official's agency is called upon to interpret or apply. 10 Op. Eth. Bd. 31, *supra*; 7 Op. Eth. Bd. 9 (1983). This would include businesses and organizations regulated by your agency. 1992 Wis. Eth. Bd. 23; 9 Op. Eth. Bd. 9 (1986). To do otherwise works against an official's impartiality and harms the agency's credibility. 10 Op. Eth. Bd. 31, *supra*.

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.

[11] In addition, §19.45(3), noted above, prohibits a state public official from accepting anything of value if it could reasonably be considered a reward for prior official action. These two provisions would prohibit the state public officials of an agency from accepting an award for work achievements apart from regular salary and merit pay or merit awards specifically authorized as part of the State's compensation system.

[12] Although the Ethics Board does not administer the ethics code promulgated by the Department of Employment Relations, which applies to state employees other than public officials, we note that it contains similar general restrictions. Wis. Admin. Code ER-MRS §24.04(2). But we also note that there is a specific exception that permits an employee to receive an award for exceptional accomplishment or outstanding performance as long as the administrator of the Department of Employment Relations Division of Merit Recruitment and Selection determines that acceptance of the award would not conflict with the purposes of the rules.

Advice

[13] The Ethics Board advises that a state agency may solicit donations for the agency's gifts and grants account as long as the agency solicits donations only from individuals, businesses, and organizations that do not do business with the agency, are not regulated by the agency, and are neither lobbyists nor lobbying principals. The agency should not use solicited funds for rewarding state public officials. Consistent with statutes administered by the Ethics Board, the agency may use solicited funds to reward other employees for exceptional accomplishment or outstanding performance as long as the use of such funds does not conflict with applicable collective bargaining agreements or with statutes or rules administered by the Department of Employment Relations.

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