
1996 Wis Eth Bd 16
POST EMPLOYMENT

The Ethics Code permits a former state public official to testify on behalf of a private party, for compensation, before an agency of another jurisdiction in a proceeding on issues in which the former official did not have personal and substantial involvement as a member of the governing body of a state agency.

If a former official testifies in a proceeding in another jurisdiction on issues with respect to which the official was personally and substantially involved as a state public official in Wisconsin, the official should accept no compensation for such testimony unless the official can clearly and convincingly demonstrate that the official is being compensated solely for the official's testimony on other issues.

The Ethics Code does not restrict a former official's attempting to influence legislation or administrative rules of state agencies other than the official's former agency if the official does not communicate with officers or employees of the official's former agency in connection with the official's lobbying efforts; and

The Ethics Code does not restrict a former official's speaking to groups and individuals on matters that may have been before the official's former agency when the official held office, but the former official should not use or disclose information gained as a result of the official's holding office if the information has not been communicated to the public or is not public information.

(November 20, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are an attorney writing on behalf of a former state public official.

Questions

[1] The Ethics Board understands your questions to be:

1. Consistent with statutes the Ethics Board administers, may a former official, for compensation, testify before an agency of another jurisdiction on behalf of a company in a proceeding

involving the same or similar facts and issues as a proceeding before the official's former agency?

2. Consistent with statutes the Ethics Board administers, may a former official, as the paid representative of a private entity, lobby Wisconsin's Legislature or state agencies, other than the official's former agency?

3. What limitations, if any, do statutes the Ethics Board administers place on a former official's speaking to individuals and groups other than government bodies, or receipt of compensation for speaking, about matters that were before the former official's agency while the official held office and in which he or she participated personally and substantially while an official?

Discussion

[2] The provisions of the Ethics Code applicable to your questions are found in §19.45(8), *Wisconsin Statutes*. That statute imposes certain post-employment restrictions on former state public officials. The statute provides:

19.45 Standards of conduct; state public officials. (8) Except in the case where the state public office formerly held was that of a legislator, legislative employee under s. 20.923(6)(f), (g) or (h), chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employee occupying the position of auditor for the legislative audit bureau:

(a) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the department with which he or she was associated as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(b) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

[3] Your client is a former state public official covered by these provisions.

Question 1

[4] In your first question, you ask whether the former official may appear before an agency of another jurisdiction with respect to an application that is the subject of a parallel proceeding before the official's former agency in Wisconsin. To answer this question, we must analyze both §19.45(8)(b) and (c).

§19.45(8)(b)

[5] The post-employment restrictions of §19.45(8)(b) pertain to a former official's appearances for pay, on behalf of private persons, before "departments" on matters formerly under the official's responsibility. Section 19.42(5), *Wisconsin Statutes*, provides:

19.42(5) "Department" means the legislature, the university of Wisconsin system, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14, or 15, any technical college district or any constitutional office other than a judicial office. In the case of a district attorney, "department" means the department of administration unless the context otherwise requires.

[6] Agencies of other jurisdictions are not departments within the meaning of the statute. Thus, §19.55(8)(b) does not apply.

§19.45(8)(c)

[7] The next issue is whether §19.45(8)(c) applies. This provision of the statute restricts a former official from acting, for pay, on behalf of any party other than the state "in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official." This provision does not refer only to appearances before Wisconsin "departments." It refers to any application or proceeding in which a former official participated personally and substantially in an official capacity.

[8] The application was filed in Wisconsin when the former official still held office. However, the official appears neither to have participated in any decisions concerning the application nor to have been involved in staff work on the application. The former official does, however, appear to have had personal and substantial involvement in a spin-off proceeding involving the development of general policies that are applicable to consideration of the application. The official also appears to have had personal and substantial involvement in formulating a submission filed by the official's agency with an agency of the federal government concerning issues in the application.

[9] The application in the other jurisdiction is a proceeding of the type described by the statute. It involves identical parties as the application in Wisconsin and the same subject matter and issues as the Wisconsin proceeding. Presumably, both the other jurisdiction and Wisconsin must approve the application. While it is true that the application is before an agency of another jurisdiction, it appears to be the same application in all real respects as the Wisconsin application.*

[10] While the former official may not have participated personally and substantially in the Wisconsin application itself, the official appears to have participated personally and substantially in developing policies and positions applicable to deciding the application. To the extent that these issues are part of the application in the other jurisdiction, we believe that the former official should not comment or testify on them. This is so whether the other jurisdiction considers these issues as part of the application or treats them separately. On the other hand, the former official may represent a private party for pay before the other jurisdiction's agency on other application issues in which the official did not have personal and substantial involvement as an official in Wisconsin.

Question 2

[11] Your second question asks whether the former official may engage in lobbying of the legislature or of state agencies other than the official's former agency. The answer is yes. We understand lobbying to mean attempting to influence legislation or administrative rule making within the meaning of the lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*. Section 19.45(8) does not restrict a former public official from appearing before agencies, other than the agency with which the official was formerly employed as long as the

* The Legislative Reference Bureau analyzed this provision of the Ethics Code in 1977 Assembly Bill 349. The Bureau's analysis describes the restriction in §19.45(8)(c) as providing that "former state officials may never represent a party *opposing the state* for pay in a matter in which they were involved personally and substantially during their employment." (Emphasis added). The statute is written more broadly to prevent a former official from taking part at all in a proceeding in which the individual was previously involved as an official.

appearance is not on a matter formerly under the official's responsibility. Neither the enactment of legislation nor administrative rule making by other agencies seem to be the kinds of matters for which the former official can be said to have been responsible while in office. Pursuant to §19.45(8)(a), the former official may not lobby officers or employees of the official's former agency to support legislation or administrative rule making at other agencies.

Question 3

[12] Your third question concerns limitations on public speaking to groups and individuals other than government bodies, on matters that may have been before the former official's agency when the official held office. The Ethics Code does not restrict such public speaking engagements by the former official. However, we note that §19.45(4), *Wisconsin Statutes*, prohibits a state public official to use or disclose information gained as a result of the official's holding office "if the information has not been communicated to the public or is not public information." We advise that the former official respect this prohibition.

Advice

[13] The Ethics Board advises:

(1) that the Ethics Code permits the former state public official on whose behalf you write to testify on behalf of a private party, for compensation, before an agency of another jurisdiction on issues in which the former official did not have personal and substantial involvement as a member of the governing body of a state agency;

(2) that if the former official testifies on issues with respect to which the official was personally and substantially involved as a state public official in related Wisconsin proceedings dealing with issues involved in the application, the official should accept no compensation for his or her testimony unless the official can clearly and convincingly demonstrate that the compensation is solely for testimony on other issues;

(3) that the Ethics Code does not restrict the former official's attempting to influence legislation or administrative rules of state agencies other than the official's former agency if the official does not communicate with officers or employees of the official's former agency in connection with the official's lobbying efforts; and

(4) that the Ethics Code does not restrict the former official's speaking to groups and individuals other than government bodies, on matters that may have been before the official's former agency when the official held office, but

that the former official should not use or disclose information gained as a result of his or her holding office if the information has not been communicated to the public or is not public information.