
1997 Wis Eth Bd 7
EMPLOYMENT CONFLICTING WITH OFFICIAL RESPONSIBILITIES;
LOBBYING LAW; USE OF STATE'S TIME, FACILITIES, SUPPLIES AND
SERVICES

The Ethics Board advises:

- (1) that neither the Ethics Code nor lobbying law restrict an individual from running for a partisan elective state office nor establishing a personal campaign committee for the individual's candidacy while the individual is a full-time appointed state public official;
- (2) that the lobbying law provides that an individual may not solicit or accept from a lobbyist or a lobbying principal a contribution for the individual's candidacy for a partisan elective state office except between June 1 and the day of the general election in the year of the candidate's election;
- (3) that the Ethics Code provides that a state public official may not rely on the state's time, facilities, services, or supplies in soliciting campaign contributions;
- (4) that although not compelled by the Ethics Code, a state public official should not solicit or accept campaign contributions from individuals, businesses, or organizations that (a) are subject to regulation by, or apply for contracts with, or grants or loans from, the official's agency; (b) are members of the immediate family of such individuals; or (c) are associated with such businesses or organizations as principal shareholders, officers, or directors; and
- (5) that although not compelled by the Ethics Code, a full-time appointed state public official should not simultaneously hold appointed state public office and seek election to a different government position without first obtaining the appointing authority's informed consent that the individual's candidacy will neither unduly affect the performance of official duties nor adversely and unduly affect the effectiveness of the individual's agency. (September 5, 1997)

Facts

- ¶1. This opinion is based upon these understandings:
 - a. You are a full-time appointed state public official.

- b. You are contemplating seeking election to a partisan elective state office and of creating a personal campaign committee to solicit and accept contributions to support your candidacy.

Questions

¶2. The Ethics Board understands your question to be:

How, if at all, do laws administered by the Ethics Board restrict your creating a personal campaign committee and your soliciting and accepting contributions for your potential candidacy for the partisan elective state office?

Discussion

¶3. Neither the Ethics Code nor lobbying law prohibit your simultaneously holding a position as a full-time state public official and running for a partisan elective state office. Nor does either restrict your establishing a personal campaign committee for your candidacy. The statutes impose some restrictions on your solicitation of contributions and on your use of office to engage in political activities.

¶4. These statutes administered by the Ethics Board are pertinent to the question you have asked:

Section 13.625(1), (2), and (3)

Wisconsin's lobbying law, ch. 13, subch. III, *Wisconsin Statutes*, addresses the issue of soliciting and accepting campaign contributions from lobbyists and from businesses and organizations that employ lobbyists. Section 13.625, *Wisconsin Statutes*, provides that you may not solicit or accept from a lobbyist or a lobbying principal a contribution for your candidacy for a partisan elective state office except between June 1 and the day of the general election in the year of your election.¹

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

13.625 Prohibited practices. (1) No lobbyist may:

* * *

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

Section 19.45(2) and (3)

Although §19.45(2), *Wisconsin Statutes*, prohibits a state public official from using his or her public position or office to obtain anything of substantial value for private benefit, that section expressly provides that it 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.”²

Although §19.45(3), *Wisconsin Statutes*, prohibits an official’s solicitation or acceptance of anything of value that could reasonably be expected to influence the official’s actions or judgment, the Ethics Code excludes from its definition of “anything of value” “political contributions which are reported under [Wisconsin’s campaign finance laws].”³ Thus, the Ethics Code does

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 . . . candidate for . . . state . . . office or to the . . . candidate's personal campaign committee; but a lobbyist may make a contribution to which par. (c) applies only as authorized in par. (c).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), . . . to a candidate for a partisan elective state office to be filled at the general election or a special election, or the . . . candidate's personal campaign committee. A campaign contribution to a . . . candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election

(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 Section 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. 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.

³ Section 19.42(1), *Wisconsin Statutes*, provides:

19.42(1) “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses which are permitted and reported under s. 19.56, political

not, as a matter of law, restrict your soliciting or accepting campaign contributions as long as the solicitation places no reliance on the state's time, facilities, supplies, or services and the contributions are permitted and appropriately reported under chapter 11. 12 Op. Eth. Bd. 3, 5 (1990); 5 Op. Eth. Bd. 97, 102 (1982).

Public policy considerations

¶5. Even in the absence of a statutory bar to your soliciting campaign contributions while holding a prominent appointed government position, we recommend that you not solicit or accept campaign contributions from an individual, business, or organization that (1) is subject to substantive regulation by your state agency; (2) has applied, or evidenced an intent to apply, for a contract or opportunity to do business with the agency; (3) has applied, or evidenced an intent to apply, for a grant or loan from the agency; (4) is a member of the immediate family of an individual applicant; or (5) is associated with a regulated business or applicant as a principal shareholder, officer, or director, or the immediate family of a principal shareholder, officer, or director.

¶6. One of the primary purposes of the Ethics Code is to “promote and strengthen the faith and confidence of the people of this state in their state public officials.” §19.41(1), *Wisconsin Statutes*. As the head of a state agency, you can be in a position to influence the award of grants and contracts or the application of rules and regulations. If you solicit campaign contributions from persons you regulate or with whom the agency does or may do business, you run a substantial risk of undermining the public's confidence in you and your agency and, more generally, in state government.

¶7. We also recommend that you obtain the approval of your appointing authority before you seek election to a partisan elective state office. In the context of outside business activities, we have said that a state official should not pursue a private interest if the official's employer determines that: (1) it will materially affect the performance of the official's state duties or (2) it will adversely affect the image or effectiveness of the agency by giving rise to the appearance or reality of impropriety. *See, e.g.*, 1992 Wis Eth Bd 32 ¶3. The policy considerations for this advice apply equally in the context of seeking elective office.

Advice

contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

¶8. The Ethics Board advises:

- (1) that neither the Ethics Code nor lobbying law restrict your running for a partisan elective state office nor establishing a personal campaign committee for your candidacy while you are a full-time appointed state public official;
- (2) that the lobbying law provides that you may not solicit or accept from a lobbyist or a lobbying principal a contribution for your candidacy for a partisan elective state office except between June 1 and the day of the general election in the year of your election;
- (3) that the Ethics Code provides that you may not rely on the state's time, facilities, services, or supplies in soliciting campaign contributions;
- (4) that although not compelled by the Ethics Code, you should not solicit or accept campaign contributions from individuals, businesses, or organizations that (a) are subject to regulation by, or apply for contracts with, or grants or loans from, your agency; (b) are members of the immediate family of such individuals; or (c) are associated with such businesses or organizations as principal shareholders, officers, or directors; and
- (5) that although not compelled by the Ethics Code, you should not simultaneously hold your appointed state public office and seek election to a different government position without first obtaining your appointing authority's informed consent that your candidacy will neither unduly affect your performance of your official duties nor adversely and unduly affect your agency's effectiveness.