
1997 Wis Eth Bd 17
POST EMPLOYMENT

The Ethics Board advises:

That, for twelve months after a state public official leaves the official's state public office at a state agency, neither the official nor anyone working in concert with the official or under the official's direction, supervision, or control, should appear before or negotiate with an officer or employee of the agency acting in an official capacity. (October 24, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
- a. Until recently, you served as a state public official.
 - b. You now plan to establish a business in Wisconsin.
 - c. You will seek both public and private customers.
 - d. You will be the controlling owner of the company, which will be structured as a corporation or limited liability company.
 - e. You will be paid by the company for your work.
 - f. You would like the state agency with which you have been associated as a state public official to purchase your company's products.
 - g. You plan to have the company hire an individual to assist you in finding customers.
 - h. You propose to have an employee of the company, other than you, approach your former agency and present the purchase opportunity to it.

Questions

- ¶ 2. The Ethics Board understands your questions to be:

Consistent with the Ethics Code, may you pursue the course of action you have outlined to solicit your former state agency to purchase products from the company you are creating?

Discussion

¶ 3. The answer to your question is governed by §19.45(8)(a), *Wisconsin Statutes*. That section, reduced to its elements, provides:

No former state public official
For 12 months after ceasing 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 official's former agency.¹

¶ 4. You are a former state public official.² You plan to create a private company. Your activities in seeking customers for the company will be on its behalf. You will be compensated by the company. Thus, your activities in seeking customers for the company appear to be activities, for compensation, on behalf of a person other than a governmental entity.³ The statute prohibits you, for twelve months, from appearing before or negotiating with the state agency with which you were formerly associated as a state public

¹ Section 19.45(8)(a), *Wisconsin Statutes*, provides:

19.45(8)(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 employe 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.

² Section 19.42(13)(intro.) and (k), *Wisconsin Statutes*, provides:

19.42(13) "State public office" means:

(k) The executive director, executive assistant to the executive director, internal auditor, chief investment officer and investment directors of the investment board.

³ Section 990.01(26), *Wisconsin Statutes*, provides:

990.01 In the construction of Wisconsin laws the words and phrases which follow shall be construed as indicated unless such construction would produce a result inconsistent with the manifest intent of the legislature:

(26) Person. "Person" includes all partnerships, associations and bodies politic or corporate.

official. Meeting with agency officials to discuss a possible sale of goods would fit within the statutory restriction.⁴

¶ 5. The remaining question, then, is whether you can avoid the restrictions imposed by §19.45(8)(a) if, in discussions and negotiations with your former agency, you send another employee of the company to present the purchase opportunity to the agency.

¶ 6. Section 19.45(8)(a)'s prohibition is a personal one – it applies to you and not to the company. Nevertheless, the Ethics Board consistently has applied the principle that a person may not do through an agent that which the law prohibits a person from doing directly.⁵ Thus, you may not, within the proscribed period, use an agent to represent you or appear in your stead before your former agency. In your letter to us, you indicate that you will have a controlling ownership interest in the company, that you will be responsible for managing the company, and that you will cause the company to hire an agent to assist you in obtaining customers. In the context of §19.45(7), *Wisconsin Statutes*, which prohibits an incumbent state public official from appearing on behalf of another for compensation before the official's agency, we said:

The Ethics Code will not be an obstacle to your firm's representing a client before the state agency with which you are affiliated if that representation is undertaken by a member of the firm whose work, judgment and compensation is not subject to your review.

10 Op. Eth. Bd. 13, 17 (1988). To the extent that any employee of your company acts in concert with you or under your direction, supervision, or control, that individual should not, for compensation, communicate with an official or employee of your former agency for twelve months after your leaving your state position.

⁴ An informal appearance includes trying to settle or arrange a matter by calling, writing, or conferring with an agency officer or employee. 9 Op. Eth. Bd. 51 (1987). To "negotiate" means "to transact business, to confer or to discuss, to arrange or settle by discussion." 6 Op. Eth. Bd. 8 (1982) (a meeting to discuss an agency's procedures for hiring consultants is an activity that 19.45(8)(a) was intended to prohibit).

⁵ 1992 Wis Eth Bd 29, ¶4 and n.2; 1992 Wis Eth Bd 27, ¶4 and n.2; 1991 Wis Eth Bd 8; 80 Op. Att'y Gen. 205, 208 (1992).

Advice

¶ 7. The Ethics Board advises:

That, for twelve months after your leaving your state public office at a state agency, neither you nor anyone working in concert with you or under your direction, supervision, or control, should appear before or negotiate with an officer or employee of the agency acting in an official capacity.

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