
1998 Wis Eth Bd 4
LOCAL CODE

The Ethics Board advises that, under §19.59, *Wisconsin Statutes*, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county's building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You write on behalf of a county, which you serve as corporation counsel.
- b. Earlier this year a county board committee established a task force to advise the county of the financial feasibility of constructing a county facility.
- c. The committee chair appointed nine individuals to serve on the task force, which continues to meet.
- d. Corporation A is a privately-owned corporation
- e. Corporation A has recently submitted a proposal to the county to operate the facility if it is constructed.
- f. Among the individuals on the task force is a county board supervisor who has an opportunity to purchase 25% of the stock of Corporation A.
- g. Another individual on the task force is an officer of Corporation A.
- h. A third individual on the task force is a member of the board of directors of Corporation A.

Questions

¶ 2 The Ethics Board understands your questions to be:

1. Does §19.59, *Wisconsin Statutes*, prohibit either of the individuals who is an officer or director of Corporation A from serving on the task force established by the county board committee to advise the committee about the construction of the facility?
2. Consistent with §19.59, *Wisconsin Statutes*, may the county board supervisor act as a member of the advisory task force or as a member of the county board on matters related to the county's construction of the proposed facility if he purchases the stock Corporation A?
3. Consistent with §19.59, *Wisconsin Statutes*, may the county board supervisor, who has an unexercised option to purchase stock in Corporation A, act either as a member of the advisory task force or as a member of the county board on matters related to the county's construction of the proposed facility?

Discussion

¶ 3 A local public official's serving on a task force charged with recommending the feasibility of the county's building a proposed facility, while simultaneously having an interest in a company seeking to operate that facility if it is built, is inconsistent with two provisions of Wisconsin's Code of Ethics for Local Officials.

SECTION 19.59(1)(C)1.

¶ 4 Section 19.59(1)(c)1., *Wisconsin Statutes*, reduced to its elements, provides, with limited exception¹:

No local public official
May take any official action
Substantially affecting a matter in which an organization with which
the official is associated or

¹ The proscription of 19.59(1)(c)1. does not prohibit certain actions affecting salaries, expenses, and modification of ordinances. Section 19.59(1)(d), *Wisconsin Statutes*, provides:

19.59(1)(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employe benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

The task force's study of, and recommendation as to, the feasibility of a proposed county facility is not a proposal to modify an ordinance.

Has a substantial financial interest.²

Local public official

¶ 5 The first issue is whether the individuals about whom you have asked are local public officials. A local public official is anyone who holds a local public office.³ Section 19.42(7w), *Wisconsin Statutes*, defines a local public office to include:

- (a) An elective office of a local governmental unit;
- (b) An appointive office or position in which an individual serves for a specified term; and
- (c) An appointive office or position which is filled by the governing body, or by the executive or administrative head, of the local government and serves at the pleasure of the appointing authority.⁴

¶ 6 A county board supervisor is a local public official by reason of holding an elective county office.⁵ However, the two citizen members of the task force

² Section 19.59(1)(c)2., *Wisconsin Statutes*, provides:

- 19.59(1)(c)** Except as otherwise provided in par. (d), no local public official may:
- 1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest,

³ Section 19.42(7x), *Wisconsin Statutes*. Provides:

19.42(7x) "Local public official" means an individual holding a local public office.

⁴ Section 19.42(7w), *Wisconsin Statutes*, provides:

19.42(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):

- (a) An elective office of a local governmental unit.
- (b) A county administrator or administrative coordinator or a city or village manager.
- (c) An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.
- (cm) The position of member of the board of directors of a local exposition district under subch. II of ch. 229 not serving for a specified term.
- (d) An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

⁵ Section 19.42(7u), *Wisconsin Statutes*, provides:

have been appointed neither for a specified term nor by the county board or county executive or administrator. Rather, they have been appointed by an individual supervisor acting as a committee chair and serve at the pleasure of that individual. The two citizen members are not local public officials to whom §19.59 applies.⁶

Official Action

¶ 7 A county supervisor's action as a member of a county-established task force, is a use of the supervisor's public position.⁷

Matter in which organization has a financial interest

¶ 8 The task force's decision whether or not to recommend the feasibility of building the proposed facility is a matter in which Corporation A has a substantial financial interest. Although the county may decide not to build the facility, a favorable recommendation from the task force is likely to significantly increase the chances that the facility will be built. Conversely, a negative recommendation is likely to significantly decrease those chances. And while Corporation A is not guaranteed to be awarded a contract to operate the facility if it is built, Corporation A will reap a substantial financial reward if it does obtain the contract.

Organization with which associated

¶ 9 Corporation A is an organization within the meaning of the statute.⁸ An individual may be associated with an organization by being an officer or director, a shareholder with at least ten percent of the organization's equity, or an authorized representative or agent.⁹ An individual may also be associ-

19.42(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

⁶ We also note that the task force was not established to make a recommendation concerning the award of a contract to any company. Its focus is solely on the financial feasibility of the county's constructing a proposed facility.

⁷ We assume that the supervisor's appointment to the task force is related to the supervisor's holding that office.

⁸ Section 19.42(11), *Wisconsin Statutes*, provides:

19.42(11) "Organization" means any corporation, partnership, proprietorship, firm, enterprise, association, trust or other legal entity other than an individual or body politic.

⁹ Section 19.42(2), *Wisconsin Statutes*, provides:

ated with an organization even though the individual does not occupy one of the relationships specifically identified by statute.¹⁰ The county board supervisor who is a member of the task force holds an option to purchase 25% of Corporation A's stock. This individual may exercise this option at any time, including at such time as Corporation A might obtain a contract to manage the proposed county facility. Indeed, the option's value may be substantially enhanced by such a contract. This economic tie gives the option holder a direct stake in the financial status of Corporation A and a personal financial interest in the county's construction of the proposed facility. Control of 25% of the equity the company has made available for sale associates the county board supervisor on the task force with that company.¹¹

SECTION 19.59(1)(C)2.

¶ 10 Section 19.59(1)(c)2., *Wisconsin Statutes*, reduced to its elements, provides, with limited exception¹²:

No local public official
May use public position or office
To assist in the production of a substantial benefit
For an organization with which the official is associated

Local public official

¶ 11 As we said above, a county board supervisor is a local public official by reason of holding an elective county office, but the two citizen members are not.

Use of public position

¶ 12 A county supervisor's action as a member of a county-established task force, is a use of the supervisor's public position.¹³

19.42(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

¹⁰ 8 Op. Eth. Bd. 11, 13, n. 4 (1984); 7 Op. Eth. Bd. 21, 23 (1983); 7 Op. Eth. Bd. 11, 14, n. 5 (1983); 5 Op. Eth. Bd. 97, 100, n. 14 (1982); 5 Op. Eth. Bd. 59, 61 (1981).

¹¹ 5 Op. Eth. Bd. 97, *supra* (economic and familial ties may associate an individual with an organization); 5 Op. Eth. Bd. 59, *supra* (an individual may be associated with a company in which the individual's close relatives, but not immediate family, own a controlling interest).

¹² See n. 1, *supra*.

Assistance in the production of a substantial benefit

¶ 13 Influencing the task force to recommend the feasibility of building the proposed facility assists in the production of a substantial benefit for Corporation A – namely, an opportunity to contract to operate the facility if it is built. Although the county may decide not to build the facility, a favorable recommendation from the task force is likely to significantly increase the chances that it will be built. And while Corporation A is not guaranteed to be awarded a contract to operate the facility if it is built, the existence of the facility will create a substantial benefit in the opportunity to seek such a contract.¹⁴

Organization with which associated

¶ 14 For the reasons stated above, Corporation A is an organization with which the county board supervisor is associated.

Advice

¶ 15 The Ethics Board advises that, under §19.59, *Wisconsin Statutes*, a county board supervisor should not simultaneously be a member of a county task force established to recommend the feasibility of the county's building a proposed facility and hold an interest or option to purchase an interest in a company seeking to operate that facility if it is built.

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¹³ We assume that the supervisor's appointment to the task force is related to the supervisor's holding that office.

¹⁴ The dictionary definition of "benefit" includes "advantage." The American Heritage Dictionary (1991); Webster's Ninth New Collegiate Dictionary (1983).