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**1998 Wis Eth Bd 6**  
IMPROPER USE OF OFFICE; LOBBYING AND LOBBYISTS;  
SOLICITATION

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The Ethics Board advises that a legislator should not authorize an organization to draw on the title and prestige of the legislator's state government office to solicit financial contributions if the organization [1] is a lobbying principal that tries to influence legislation and spends money in support of or in opposition to candidates for election to state offices, or [2] is an organization with which the legislator is associated.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You are a member of the legislature.
- b. You have been asked to sign a letter urging recipients to become members of a not-for-profit organization.
- c. The letterhead will have your name and state title on it as will the signature line.
- d. You are a member of the organization, but are neither an officer or director.
- e. The organization is a registered lobbying principal in Wisconsin.

Question

¶ 2 The Ethics Board understands your question to be:

Do laws administered by the Ethics Board restrict your signing a letter soliciting recipients to become members of the organization?

Discussion

¶ 3 Based on the facts that you have presented, the Ethics Board recommends that you not permit the organization to use the title and prestige of your office to solicit memberships in that organization.

¶ 4 The provision of the Ethics Code most pertinent to your question is §19.45(2), *Wisconsin Statutes*. That section, reduced to its elements, provides:

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 an organization with which the official is associated.<sup>1</sup>

¶ 5 You are a state public official.<sup>2</sup> Use of office includes using the title and prestige of office.<sup>3</sup> Obtaining additional dues-paying members for an organization is a financial gain for that entity. The not-for-profit organization about which you have written is an “organization” within the meaning of the statute.<sup>4</sup> The only remaining question is whether the organization is an organization with which you are associated.

¶ 6 Section 19.42(2), *Wisconsin Statutes*, provides:

**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

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<sup>1</sup> 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.

<sup>2</sup> Section 19.42(13)(c), *Wisconsin Statutes*, provides:

**19.42(13)** “State public office” means:  
(c) All positions identified under s. 20.923(2), (4), (4m), (6)(f) to (h) and (8) to (10), except clerical positions.

Section 20.923(2)(b), *Wisconsin Statutes*, identifies members of the legislature.

<sup>3</sup> 1994 Wis Eth Bd 1, ¶5; 1991 Wis Eth Bd 6, ¶6; 10 Op. Eth. Bd. 47 (1988); 10 Op. Eth. Bd. 43 (1987); 9 Op. Eth. Bd. 45 (1987); 9 Op. Eth. Bd. 21 (1986); 5 Op. Eth. Bd. 98 (1982); 3 Op. Eth. Bd. 53 (1979).

<sup>4</sup> Section 19.42(11), *Wisconsin Statutes*, provides:

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

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.

¶ 7 The proposed solicitation letter would note that you are “affiliated” with the organization. We understand that neither you nor a member of your immediate family is an officer, director, or shareholder of the organization; however, you are a member of the organization and your participation in the proposed letter of financial solicitation would be in concert with, and at the request and suggestion of, the organization.

¶ 8 It is well established that an official may associate himself or herself with an organization by lending his or her name to it for the organization’s solicitation of funds.<sup>5</sup> Thus, as a matter of law there is a substantial basis to support the conclusion that your acting in concert with, and at the request and suggestion of, the organization associates you with that organization<sup>6</sup> and that Wisconsin’s Ethics Code prohibits your using the title or prestige of your state government position to solicit funds for that organization.

¶ 9 We do not, however, find it necessary to resolve this issue definitively because for yet another reason we recommend against your pursuing the course you have asked about. You hold an important and prestigious position in the government of the state of Wisconsin. The people of Wisconsin have entrusted to your care the title and the prestige of the office of state legislator. The Board’s members are unanimous in recommending that you guard the dignity of your government position and preserve it from use in private fundraising efforts by any organization that is both paying

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<sup>5</sup> 10 Op. Eth. Bd. 47, 49, n. 5 (1988); 7 Op. Eth. Bd. 21, 23, n.6 (1983); 5 Op. Eth. Bd. 97, 100-01, n. 15 (1982); 5 Op. Eth. Bd. 59, 61, n.6 (1981); Minutes, closed session of the Ethics Board, July 15, 1980.

In a 1994 opinion, 1994 Wis Eth Bd 1, the Ethics Board held that signing a letter to solicit membership in an organization, alone, did not mean that the official became the organization’s “authorized representative or agent” within the meaning of the statute. However, a person may also be associated with an organization even though the person does not occupy one of the relationships specifically identified by statute. Section 19.42(2), in defining “associated,” states that the word “associated” “includes” the indicated relationships. In contrast, the other definitions contained in §19.42 state that the words that are defined “mean” or “have the meaning of” the indicated words. 10 Op. Eth. Bd. 47, 49, n. 5 (1988) (legislator acted as the organization’s agent for the conduct of its affairs in Wisconsin, including solicitation of funds); 5 Op. Eth. Bd. 97, 100-01, n. 15 (1982) (legislator soliciting for legislative campaign committee).

<sup>6</sup> Section 11.06(7m), *Wisconsin Statutes*, creates a test for independent campaign expenditures and establishes that a committee’s expenditure is not independent of a candidate if the expenditure is made in concert with or at the request or suggestion of the candidate. This same consideration has application to the issue you have presented.

individuals to influence the creation and modification of Wisconsin's laws and is engaged in influencing the election of individuals to state offices.<sup>7</sup>

¶ 10 Although we accept that you and the organization are joined by common, deeply held conviction and not by an inappropriate motive, we cannot fashion useful guidance on motives alone. "The end justifies the means" is not a public policy Wisconsin's traditions support. In spite of your good motives, the course that the organization has asked you to undertake would permit others to infer that you are using your state government position to solicit money for a group that in turn directs money in support of your own election in exchange for your support of its legislative agenda. That would undermine citizens' faith and confidence in state government, faith and confidence that the Ethics Board was established to foster.<sup>8</sup>

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<sup>7</sup> The Wisconsin Democracy Campaign reports that the organization spent tens of thousands of dollars to influence elections in Wisconsin during 1995-1996, including the expenditure of funds to advance your own re-election.

<sup>8</sup> In addition to the reason we have already articulated for our recommendation, we note that the lobbying law, at §13.625, *Wisconsin Statutes*, prohibits a lobbying principal to furnish to you anything of pecuniary value and prohibits your acceptance of anything of pecuniary value from a principal. Because of your affiliation with the organization, the facts that you have presented could be characterized as the organization's furnishing you with stationery, envelopes, and postage to enable you to solicit memberships on its behalf, in derogation of §13.625. Section 13.625, *Wisconsin Statutes*, in relevant part, provides:

**13.625 Prohibited practices. (1)** No lobbyist may:

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

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

¶ 11 Consistent with our advice the organization may identify you as someone who supports its work (if that is the case), and you may offer your opinions about the goals and actions of the organization and any other lobbying group. You should not, however, lend the title and prestige of your office to further the fundraising effort about which you have asked.

Advice

¶ 12 The Ethics Board advises that you not authorize the organization to draw on the title and prestige of your state government office to solicit financial contributions if the organization [1] is a lobbying principal that tries to influence legislation and spends money in support of or in opposition to candidates for election to state offices, or [2] is an organization with which the legislator is associated.

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