
1998 Wis Eth Bd 8
IMPROPER USE OF OFFICE

The Ethics Board advises that a member of the legislature may authorize a company to use the legislator's name and likeness in advertising tours that would include a meeting between the legislator and tour members, but recommends that a legislator permit this only so long as the legislator neither solicits nor accepts a campaign contribution or anything of substantial value from the company or individuals affiliated with it and that the company and individuals affiliated with it do not furnish campaign contribution or items of more than inconsequential value to the legislator and do not independently make campaign expenditures on the legislator's behalf.

Facts

- ¶ 1 This opinion is based upon these understandings:
- a. You are a member of the legislature.
 - b. A company in your district has proposed to use your name and likeness in advertising a Madison tour that would include a meeting between you and tour members.
 - c. You have no relation to, or financial interest in, the company and would receive no compensation from your participation in the proposal.

Question

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

Do laws administered by the Ethics Board restrict your participation in the company's proposal?

Discussion

- ¶ 3 Among the statutory provisions that the Ethics Board has considered in addressing your question are §§19.45(2) and (3) and 19.46(1)(b), *Wisconsin Statutes*. Reduced to their elements, these sections of the Ethics Code provide:

No state public official
May use his or her position or office
To obtain anything of substantial value
For private benefit
Or to produce or assist in the production of a substantial private
benefit;¹
and

No state public official
May accept
Anything of value
If it could reasonably be expected to influence the official's judgment or
actions
Or could reasonably be considered a reward for any official action.²

¶ 4 You are a state public official.³ Use of office includes using, or
permitting others to use, the title and prestige of your office.⁴ The company's

¹ 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.

Section 19.46(1)(b), *Wisconsin Statutes*, provides:

19.46(1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Section 19.45(3), *Wisconsin Statutes*, provides:

19.45(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

³ Section 19.42(13)(c), *Wisconsin Statutes*, provides:

19.42(13) "State public office" means:

proposal appears to have several potential beneficiaries. (1) The company could benefit from enhanced business. (2) You and your constituents could benefit from an increased opportunity to meet. (3) You could benefit in your election efforts from the publicity attendant on the company's advertising.

¶ 5 Because you are not associated with the company,⁵ the statutes do not prohibit your use of office to benefit the company. A legislator's meeting with constituents is primarily a public, and only incidentally a private, benefit. Finally, there does not appear to be a substantial basis for concluding from the facts you have presented that you would be accepting anything that could reasonably be expected to influence your judgment or actions. Thus, the Ethics Code does not prohibit your participation in the company's proposal to use your name and likeness in advertising tours that would include a meeting between you and tour members.

¶ 6 However, the Ethics Board recommends that you not solicit or accept a campaign contribution from the company or from individuals affiliated with it. 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 not lend the title and prestige of your office to a commercial enterprise if you intend to derive campaign contributions from it. That would undermine citizens' faith and confidence in state government that the Ethics Board was established to foster.

(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.

⁴ 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. 97 (1982); 3 Op. Eth. Bd. 53 (1979).

⁵ 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 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.

Advice

¶ 7 The Ethics Board advises that you may authorize the company to use your name and likeness in advertising tours that would include a meeting between you and tour members, but recommends that you permit this only so long as you neither solicit nor accept a campaign contribution or anything of substantial value from the company or individuals affiliated with it and that the company and individuals affiliated with it do not furnish campaign contribution or items of more than inconsequential value to you and do not independently make campaign expenditures on your behalf.

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