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**1999 Wis Eth Bd 01**  
LOCAL CODE - JURISDICTION; LOCAL CODE - MEALS, LODGING,  
TRAVEL AND ENTERTAINMENT

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Except in the uncommon instance in which the teacher's appointment is for a specified term or at the pleasure of the appointing authority, a public school teacher is not a local public official covered by §19.59, *Wisconsin Statutes*.

In an instance in which a teacher is a local public official, the teacher should consult with the school district's legal counsel to review the specific circumstances to determine whether §19.59 restricts participation in a program open to teachers whose benefits include lodging and meals in connection with a training seminar in another state, the provision of certain equipment, reimbursement for released time (with prior approval), expense reimbursement for presentations (with prior approval), and lodging and meals in connection with an annual reunion.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You write on behalf of a company that offers a program open to teachers with identified expertise in a specific educational area.
- b. The program requires, among other things, that participants make presentations, conduct demonstrations and contribute an annual publishable product.
- c. The program's benefits include lodging and meals in connection with a training seminar in another state, the provision of certain equipment, reimbursement for released time (with prior approval), expense reimbursement for presentations (with prior approval), and lodging and meals in connection with an annual reunion.

Questions

¶ 2 The Ethics Board understands your questions to be:

1. Do laws administered by the Ethics Board apply to Wisconsin public school teachers?
2. If so, do those laws restrict a teacher's participation in the program?

### Discussion

¶ 3 Section 19.59, *Wisconsin Statutes*, the Code of Ethics for Local Government Officials, restricts a local public official from using his or her public position to obtain anything of substantial value for private benefit or to accept anything of substantial value if it could reasonably be expected to influence the individual's official judgment or actions.<sup>1</sup> The statute applies to specified officials of local units of government. The first question is whether the statute applies to public school teachers.

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<sup>1</sup> Section 19.59(1)(a), (b), and (c), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates. (1)(a)** No local 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. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local 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 local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(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.
2. 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.

*Applicability of §19.59*

¶ 4 A public school district is a local unit of government.<sup>2</sup> A local public official of a school district includes (1) an elected official; (2) an individual holding an appointive office or position in which the individual serves for a specified term, and (3) an individual holding an appointive office or position which is filled by the school board or the executive or administrative head of the school district and in which the individual serves at the pleasure of the appointing authority.<sup>3</sup>

¶ 5 In the circumstances with which we are acquainted, teachers do not meet any of these criteria. They are not elected. They do not serve only for a limited term. They do not serve at the pleasure of a school district.<sup>4</sup> In the overwhelming majority of cases, a teacher continues as a teacher unless and until the individual resigns or is removed for cause. In Milwaukee County, this is established by statute. Section 118.23, *Wisconsin Statutes*, provides

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<sup>2</sup> Section 19.42(7u), *Wisconsin Statutes*, provides:

**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.

See 1997 Wis Eth Bd 6, ¶6.

<sup>3</sup> Section 19.42(7x), *Wisconsin Statutes*, provides:

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

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.

<sup>4</sup> For some positions, such as a coach, department head, and program director, an individual's appointment may be at the pleasure of the appointing authority.

that a teacher in Milwaukee County, after a probationary period, shall have permanent employment. In other school districts, collective bargaining agreements or policy usually allow a teacher's removal only for cause.<sup>5</sup>

*Section 19.59's restrictions*

¶ 6 In an instance in which a teacher may be a local public official, then §19.59 applies. The statute's two primary restrictions to consider with respect to the program are the restriction on an individual's using public office to obtain anything of substantial value for private benefit or accepting anything of value if it could reasonably be expected to influence the individual's official judgment or actions. There are too many circumstances that may exist to enable the Ethics Board to provide a definitive answer about which, or whether, a particular teacher who is a local public official may or may not participate in the program in any given instance. Important considerations will include: (1) whether participation in the program is primarily of benefit to the school district rather than to the individual, which may be evidenced by the school district's authorization or approval of such participation; and (2) whether or not a teacher is in a position to influence a decision on the school district's purchase of equipment of the type to be furnished by the program. A teacher who is a local public official may consult the school district's legal counsel for guidance.<sup>6</sup>

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<sup>5</sup> We note that §118.22, *Wisconsin Statutes*, provides that each year a school board must give notice whether it will renew or refuse to renew a teacher's employment. This statute creates some ambiguity in applying §19.42(7w) to teachers in school districts other than Milwaukee County. However, a collective bargaining agreement may limit the power of a school board to discharge a teacher. *See Fortney v. School District of West Salem*, 108 Wis.2d 167 (1982). We also note that the clear intent of §19.42(7w) is that it apply only to elected officials and to top management officials in a local governmental unit. The current version of §19.59 and the corresponding definitions of §19.42 were first enacted in the 1991 budget bill, 1991 Act 39, §§212qc to qw. The provisions were based on 1991 Assembly Bill 420 and 1991 Senate Bill 198. The Legislative Reference Bureau analysis of these bills describes them as establishing ethical standards of conduct "for elected officials and major appointed officials of all local governments."

<sup>6</sup> Section 19.59(5)(a), *Wisconsin Statutes*, provides:

**19.59(5)(a)** Any individual, either personally or on behalf of an organization or governmental body, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit, an advisory opinion regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The county or municipal ethics board or the county corporation

Advice

¶ 7 The Ethics Board advises that except in the uncommon instance in which the teacher's appointment is for a specified term or at the pleasure of the appointing authority, a public school teacher is not a local public official covered by §19.59, *Wisconsin Statutes*.

¶ 8 In an instance in which a teacher is a local public official, the teacher should consult with the school district's legal counsel to review the specific circumstances to determine whether §19.59 restricts participation in the program you have described.

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counsel or attorney shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. It is prima facie evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local government unit and abides by the advisory opinion, if the material facts are as stated in the opinion request. A county or municipal ethics board may authorize a county corporation counsel or attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in par. (b), neither a county corporation counsel or attorney for a local governmental unit nor a member or agent of a county or municipal ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.