
2004 Wis Eth Bd 07
LOBBYING LAW

The Ethics Board advises that an agency official should pay a lobbying organization on whose board of directors the official serves for any food, lodging, or transportation the organization furnishes the official in connection with serving on its board of directors. Because the official's state agency encourages its employees to participate in the organization's activities, routinely permits employees to participate in those activities without the need to take leave time, and reimburses employees' expenses for those activities when it can, it appears appropriate for the agency to reimburse the official for those costs. The lobbying law is not an obstacle to the organization's reimbursing the state agency for those expenses.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You are a state public official and your responsibilities include participating in rulemaking activities.
 - b. You have been elected to the board of directors of an organization of professionals that is a registered lobbying principal in Wisconsin.
 - c. The organization reimburses or pays the expenses of board members attending board meetings.

Question

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

Consistent with laws the Ethics Board administers, may you accept reimbursement from the organization for expenses you incur in attending meetings of the organization's board of directors?

Discussion

- ¶3 Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*, reduced to its elements, provides:

No lobbying principal
May furnish
Food, meals, beverages, money or
Anything of pecuniary value
To an agency official, and

No agency official
May solicit or accept
From a lobbying principal
Anything that the principal is prohibited from furnishing.¹

¶5 Your responsibilities as a state public official include participation in rulemaking. As long as these activities are not limited to clerical, secretarial, or ministerial actions you are an agency official within the meaning of §13.62 (3), *Wisconsin Statutes*.² The organization on whose board of directors you

¹ Section 13.625, *Wisconsin Statutes*, provides:

13.625 Prohibited practices. (1) No lobbyist may:

* * *

(b) Furnish to any agency official or legislative employee of the state or to any elective state official or candidate for an elective state office, or to the official's, employee'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).

* * *

(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 employee 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).

² Section 13.62 (3), *Wisconsin Statutes*, provides:

13.62 (3) "Agency official" means a member, officer, employee or consultant of any agency who as part of such person's official responsibilities participates in any administrative action in other than a solely clerical, secretarial or ministerial capacity.

Section 13.62 (1), *Wisconsin Statutes*, provides:

serve is a registered lobbying principal. Food, drink, transportation and lodging, or reimbursement therefor, have pecuniary value. The organization's giving you these items is a furnishing. This is so even if the furnishing only makes you whole.³ Thus, as we advised another agency official in 1996, you may not accept reimbursement or payment of your expenses from the organization for attending board of directors meetings.⁴

¶6 Although an organization that employs a lobbyist to affect Wisconsin's laws may provide nothing of pecuniary value to a key official of any branch of government, Wisconsin's lobbying laws do not establish an obstacle to an organization's providing goods or services to the state.⁵

¶7 If the state agency of which you are a part appropriately⁶ pays your expenses to attend meetings of the organization's board of directors and the organization reimburses your agency, then the organization is furnishing reimbursement to the State and not to you. The head of your agency informs us that it is the policy of the agency to encourage and permit employees to participate in professional organizations and associations. Employees' participation in such organizations and attendance during business hours will be supported by the agency when reasonably related to the work assignments of the employee. If approved, employees will be allowed to participate without the need to take leave time and the agency may also reimburse costs incurred as a result of participation.

¶8 Thus, we believe there is good evidence to support the conclusion that your agency's reimbursement of your expenses is appropriate.

¶9 We understand that it may be easier for the organization on whose board of directors you serve simply to provide you directly with food, lodging, or transportation, but we counsel against that course. We recommend that you pay all of the expenses that you incur in connection with your activities

13.62 (1) "Administrative action" means the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227.

³ The Attorney General has opined that the word "furnish," as used in the lobbying law, includes both giving gratuitously as well as exchanging something for fair value, such as labor for compensation. 80 Op. Att'y Gen. 205 (1992).

⁴ 1996 Wis Eth Bd 6. *See also* 2002 Wis Eth Bd 3; 1999 Wis Eth Bd 4.

⁵ 2004 Wis Eth Bd 2, ¶4; 1997 Wis Eth Bd 4, ¶7; 1996 Wis Eth Bd 8, ¶7.

⁶ A state agency may expend public funds only for a public purpose. *See, e.g., Wisconsin Solid Waste Recycling Authority v. Earl*, 70 Wis. 2d 464 (1975); *State ex rel. Wisconsin Development Authority v. Dammann*, 228 Wis. 147 (1938); 72 Op. Att'y Gen. 172 (1983); 66 Op. Att'y Gen. 43 (1977).

as a member of the organization's board of directors, including payment to the organization for the value of meals or lodging or other services or items it provides directly to you, as best as you can determine those values. You may then request reimbursement from your agency and the organization may then reimburse the agency its expenses.

¶10 The method we recommend is not a matter simply of bureaucracy and red tape. The protocol we suggest is designed to elicit the agency's review of the purpose of the expenses and determine, in each case, that your activities on the private organization's board of directors are for the benefit of the State of Wisconsin, are related to your state duties and, thus, are reimbursable.

Advice

¶11 The Ethics Board advises that you should pay the organization on whose board of directors you serve for any food, lodging, or transportation the organization furnishes you in connection with your serving on its board of directors. Because your state agency encourages its employees to participate in the organization's activities, routinely permits employees to participate in those activities without the need to take leave time, and reimburses employees' expenses for those activities when it can, it appears appropriate for the agency to reimburse you for those costs. The lobbying law is not an obstacle to the organization's reimbursing your agency for those expenses.

WR1176