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**2005 Wis Eth Bd 08**  
**LOBBYING LAW**

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The Ethics Board advises that a candidate for the Legislature may, consistent with Wisconsin's lobbying law:

- (1) remain employed as a lobbyist by the candidate's employer while a candidate for election to the Legislature;
- (2) engage in campaign activities while on paid vacation time, holidays, and compensatory time in accordance, and consistent with, the employer's treatment of other employees' use of leave time; and
- (3) continue, while a candidate and prior to taking office, to receive benefits paid in part by the employer consistent with the organization's policy for other employees.

The Ethics Board also advises that upon assuming office, a legislator may no longer accept compensation or anything else of pecuniary value from the organization except to the extent that the legislator, as a former employee, may be contractually entitled to continue to receive benefits from an employment or union contract that predates the candidacy.

Facts

¶1 This opinion is based upon these understandings:

- a. You are an employee of an organization that is a registered lobbying principal.
- b. You serve as the organization's government relations director and are a lobbyist on its behalf.
- c. You are proposing to run for election to the Legislature.
- d. You plan to ask your employer for permission to use paid leave to conduct your campaign.
- e. The paid leave you seek includes:
  - 35 days of paid vacation, already accrued;
  - paid holidays;
  - 23 days of paid compensatory time; and
  - additional paid vacation, paid holidays, and paid compensatory time with which you will be credited during 2006.

- f. Your employer will continue to contribute payments for your health care, retirement, insurance, and other benefits during your paid leave.
- g. Your employer will not reimburse you for any expenses related to your campaigning.

## Questions

¶2 The Ethics Board understands your questions to be:

- 1. Does Wisconsin's lobbying law impose any impediment to your employer's employing you as a lobbyist while you are a candidate for election to the Legislature?
- 2. Does the lobbying law permit you to engage in campaign activities while on paid leave time as you have described?
- 3. May your employer continue to provide you with employee benefits while you are a candidate for election to the Legislature?

## Discussion

¶3 Wisconsin's lobbying law, at §13.625, *Wisconsin Statutes*, generally prohibits an organization that employs a lobbyist to furnish anything of pecuniary value to an elected state official, agency official, legislative employee, or candidate for state office and prohibits those individuals to accept anything of pecuniary value from the organization,<sup>1</sup> including income paid by an employer.

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<sup>1</sup> Section 13.625 (1), (2), and (3), *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).

(c) Except as permitted in this subsection, make a campaign contribution, as defined in s. 11.01 (6), to a partisan elective state official for the purpose of promoting the official's election to any national, state or local office, or to a candidate for a partisan elective state office to be filled at the general election or a special election, or the

2005 Wis Eth Bd 05; 2003 Wis Eth Bd 15; 2003 Wis Eth Bd 02; 1992 Wis Eth Bd 26; 80 Op. Att'y Gen. 205 (1992). However, the Legislature has created an exception to the prohibition for a non-incumbent candidate for state office.

¶4 Section 13.625 (4), *Wisconsin Statutes*, reduced to its elements, provides:

- The prohibition on a lobbying principal's furnishing anything of pecuniary value does not apply
- To the compensation or furnishing of employee benefits by a principal
- To an employee who is a candidate for an elective state office
- Who does not hold such an office
- If the principal or employee can demonstrate by clear and convincing evidence
- That the employee's employment, compensation, and employee benefits are unrelated to the candidacy.<sup>2</sup>

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official's or candidate's personal campaign committee. A campaign contribution to a partisan elective state official or candidate for partisan elective state office or his or her personal campaign committee may be made in the year of a candidate's election between June 1 and the day of the general election, except that:

1. A campaign contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floorperiod, and is not in special or extraordinary session.
2. A campaign contribution by a lobbyist to the lobbyist's campaign for partisan elective state office may be made at any time.

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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 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).

<sup>2</sup> Section 13.625 (4), *Wisconsin Statutes*, provides:

**13.625 (4)** Subsections (1) (b) and (3) do not apply to the compensation or furnishing of employee benefits by a principal to an employee who is a candidate for an elective state office but who does not hold such an office if the employee is neither an agency official nor legislative employee, and if the principal or employee can demonstrate by clear and convincing evidence that the principal's employment of the employee and the compensation and employee benefits paid to the employee are unrelated to the candidacy. If the employee was employed by the principal prior to the first day of the 12th month commencing before the deadline for the filing of nomination papers for the office sought and the employment continues uninterrupted, without augmentation of compensation or employee benefits, except as provided by preexisting employment agreement, it is rebuttably presumed that the employment and compensation and benefits paid are unrelated to the candidacy.

¶5 The facts that you have provided are: You are an employee of an organization, not an independent contractor. The organization has a long-standing policy of encouraging its employees to participate in public and community affairs. Your accumulation and use of vacation days, holidays, and comp time is in accordance, and consistent, with the organization's treatment of other employees. While not on leave, you will continue to perform all of your required job functions. The organization will enforce existing policies to ensure that none of its resources are used in connection with campaign activities.

¶6 Under these circumstances, the exception of §13.625 (4), *Wisconsin Statutes*, applies and that you may continue to work for and receive compensation and other employee benefits from your employer while using leave time for campaigning. The lobbying law does not require you to surrender your license or for your employer to withdraw your lobbying authorization during your candidacy.

¶7 As a candidate for a state office, you are subject to the other restrictions in the lobbying law and, if you are elected, you will continue to be subject to these restrictions.<sup>3</sup> The exemption in §13.625 (4), *Wisconsin Statutes*, applies to a candidate as long as you do not hold state office. Absent unusual facts, the Board presumes that you will continue to be a candidate, as that term is defined, even after your election.<sup>4</sup> Upon assuming office in January 2007, you may no longer accept compensation or anything else of pecuniary value from the organization except to the extent that you are contractually entitled to continue to receive benefits from an employment or union contract that predates your candidacy. 2000 Wis Eth Bd 3.

### Advice

¶8 The Ethics Board advises that you may, consistent with Wisconsin's lobbying law:

- (1) remain employed as a lobbyist by your employer while you are a candidate for election to the Legislature;
- (2) engage in campaign activities while on paid vacation time, holidays, and compensatory time in accordance, and consistent with, your employer's treatment of other employees' use of leave time; and

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<sup>3</sup> The lobbying law's restrictions in §13.625, *Wisconsin Statutes*, apply to elective state officials. An "elective state official" includes a person who "has been elected to an elective state office but has not yet taken office." §13.62 (6), *Wisconsin Statutes*.

<sup>4</sup> It is somewhat unclear whether the exemption in §13.625 (4) ends upon election to office or upon taking office. Under the lobbying law's definitions, you become an elective state official subject to the law's restrictions (on receiving anything of pecuniary value from a principal) when you are elected. The sub. (4) exemption applies to a *candidate* who does not hold office. Whether an individual continues to be a candidate after election is, in part, a question of fact. We will presume that an individual elected to office continues to be a candidate. The presumption may be overcome based on specific facts. This approach accords with the law's purpose to avoid discouraging an individual to become a candidate for state office by requiring that individual to give up his or her livelihood in order to run.

(3) continue, while a candidate and prior to your taking office, to receive benefits paid in part by your employer consistent with the organization's policy for other employees.

¶9 The Ethics Board also advises that upon assuming office in January 2007, you may no longer accept compensation or anything else of pecuniary value from the organization except to the extent that you may be contractually entitled to continue to receive benefits from an employment or union contract that predates your candidacy.

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