
2006 Wis Eth Bd 07
LOBBYING

The Ethics Board advises:

- 1) An elected state official may accept compensation from a joint venture if the official is providing professional services to the joint venture for its use; and
- 2) An elected state official may not accept compensation for professional services the official provides directly to a lobbying principal regardless of whether the lobbying principal pays the official directly or the joint venture pays the official.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You are a member of the Legislature.
 - b. An organization has awarded a contract to a joint venture of two engineering firms.
 - c. That organization employs a lobbyist in Wisconsin.
 - d. The joint venture has asked you to be a subcontractor.
 - e. The lobbying organization has no right to select or veto the hiring of subcontractors.

Questions

- ¶2 The Ethics Board understands your question to be:
- May you accept employment as a subcontractor with the joint venture?

Discussion

¶3 Wisconsin’s lobbying law prohibits an organization that employs a lobbyist (“principal”) from furnishing anything of pecuniary value to a legislator¹ and prohibits the legislator from accepting anything of pecuniary value from a principal.² This prohibition includes compensation for employment.³ In interpreting this prohibition as it applies to lobbyists and officials, the Attorney General has stated:

The question of whether a lobbyist who is furnishing something of pecuniary value to an official’s employer, relative or corporation is actually furnishing the item or service to the state official will always be a question of fact. I agree . . . that the law not only prohibits a lobbyist from furnishing things of pecuniary value directly to an official, but also prohibits a lobbyist from furnishing those things indirectly if the official will receive something of pecuniary value from the transaction. Therefore, an official would not be in violation of the law if the official’s employer did business with the lobbyist but the official’s compensation from the company was totally unrelated to and not determined by the income derived from that business. On the other hand, if the lobbyist were purchasing products from a company which employed an official, knowing that the official’s compensation from the company would be enhanced by the purchases, a violation of the law would occur.

OAG 9-92 (March 23, 1992).

¶4 The question at hand is whether the circumstances are appropriately characterized as the lobbying organization’s furnishing money or anything of pecuniary value to you. If so, you should not proceed with this employment; otherwise you may. We understand that the joint venture, not the organization that employs a lobbyist, would directly furnish your compensation, but our review cannot be limited to a superficial examination; it must include an exploration of the parties’ true interests and relationships.

¹ Section 13.625 (1) (b) and (2), *Wisconsin Statutes*, in relevant part, provides:

13.625 Prohibited practices. (1) No lobbyist may:
* * *
(b) Furnish to any . . . elective state official . . . :
1. Lodging.
2. Transportation.
3. Food, meals, beverages, money or any other thing of pecuniary value.
* * *
(2) No principal may engage in the practices prohibited under sub. (1) (b).

² Section 13.625 (3), *Wisconsin Statutes*, in relevant part, provides:

13.625 (3) No . . . elective state official . . . may solicit or accept anything of pecuniary value from a lobbyist or principal.

³ 1992 Wis Eth Bd 03; 1992 Wis Eth Bd 05; 77 Op. Atty. Gen. 160 (1988).

¶5 We understand that, although the joint venture would not have hired you but for the joint venture's agreement with the lobbying organization, the joint venture has selected you independent of the suggestions, desires, or advice of the lobbying organization. Moreover, you have told us that the lobbying organization has no right to select or veto the hiring of the joint venture's subcontractors. If you are to furnish your work product to the joint venture for its acceptance and approval, and the joint venture will determine whether or what part of your work it will submit to the lobbying organization, then you are working for the joint venture, and the joint venture is compensating you for work you are performing for the joint venture. On the other hand, if you submit your work product to the lobbying organization for its review and approval, then you are working for that organization. In that case the compensation must be viewed as coming from the lobbying organization and the joint venture is merely acting as a conduit of the funds from the lobbying organization to you. That circumstance is to be avoided.

¶6 We offer this illustration: A state official may provide accounting services, investment advice, or engineering reports to a law firm, advertising agency, or engineering company, even if any of those companies included lobbying principals among its clients and used the official's work in providing services to a lobbying principal. In contrast, a state official employed by any of those firms should not provide legal services, public relations advice, or engineering reports directly to any of the firms' clients that employ a lobbyist.

Advice

¶7 The Ethics Board advises:

- 1) You may accept compensation from the joint venture if you are providing professional services to the joint venture for its use; and
- 2) You may not accept compensation for professional services you provide directly to the lobbying principal regardless of whether the lobbying principal pays you directly or the joint venture pays you.

WR1239
