
2007 Wis Eth Bd 11
LOBBYING LAW

The Ethics Board advises that an individual employed by an organization that lobbies in Wisconsin may, consistent with Wisconsin's lobbying law:

- (1) remain employed as a lobbyist by the organization while the individual is a candidate for election to the Legislature;
- (2) engage in campaign activities for others that are consistent with the lobbying law while the individual is a lobbyist for the organization and a candidate for elective state office.

The Ethics Board also advises that upon assuming office in January 2009, the individual may no longer accept compensation or anything else of pecuniary value from the organization except to the extent that the individual may be contractually entitled to continue to receive benefits from an employment contract that predates your candidacy

Facts

¶1 We base this opinion upon these understandings:

- a. You are an employee of a registered lobbying principal.
- b. You serve as the organization's executive director and are a lobbyist on its behalf.
- c. You are proposing to run for election to the Legislature in the 2008 general election.

Questions

¶2 The Ethics Board understands your questions to be:

1. Does Wisconsin's lobbying law impose any impediment to your organization'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 the organization's campaign activities on behalf of other candidates while you are a candidate for election to the Legislature?

Discussion

¶3 But for the exception discussed below, Wisconsin's lobbying law, at §13.625, *Wisconsin Statutes*, prohibits an organization that employs a lobbyist to furnish anything of pecuniary value to an elected state official or candidate for state office and prohibits those individuals to accept anything of pecuniary value

from the organization,¹ including income paid by an employer. 2005 Wis Eth Bd 5; 2003 Wis Eth Bd 15; 2003 Wis Eth Bd 2; 1992 Wis Eth Bd 26; 80 Op. Att'y Gen. 205 (1992).

¶4 The Legislature has created an exception to the foregoing prohibition for a non-incumbent candidate for state office. Reduced to its elements, section 13.625 (4), *Wisconsin Statutes*, 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.²

¹ 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 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.

* * *

(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 13.625 (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

¶15 The statute creates this presumption:

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.³

¶16 The exception of §13.625 (4), *Wisconsin Statutes*, appears to apply to the circumstance about which you have asked; if so, you may continue to work for and receive compensation and other employee benefits from your employer while you are a candidate for election to the Legislature.⁴ The lobbying law does not require you to surrender your license or for the organization to withdraw your lobbying authorization during your candidacy.

¶17 As a candidate for a state office, you are subject to the other restrictions in the lobbying law and, if you win election to the Legislature, then you will continue to be subject to these restrictions.⁵ The exemption in §13.625 (4), *Wisconsin Statutes*, applies to a candidate who does not hold state office. Absent unusual facts, the Board presumes that you will continue to be a candidate, as the *Statutes* define that term, even after your election.⁶ Upon assuming office in January 2009, 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 contract that predates your candidacy.

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.

3 Section 13.624 (4), *Wisconsin Statutes*.

4 See 2005 Wis Eth Bd 08; Ethics Board Guideline 255.

5 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*.

6 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 exemption at §13.625 (4), *Wisconsin Statutes*, 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 presume that an individual elected to office continues to be a candidate. Facts may overcome that. 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. See 2005 Wis Eth Bd 8.

¶8 As a lobbyist, you may not furnish anything of pecuniary value to other candidates for elective state office or to their campaigns. Ethics Board Guideline 250 addresses the limits on a lobbyist's campaign activities for others. The lobbying law does not impose restrictions on a candidate's campaign activities for other candidates for elective state office.

Advice

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

- (1) remain employed as a lobbyist by your organization while you are a candidate for election to the Legislature;
- (2) engage in campaign activities for others that are consistent with the lobbying law while you are a lobbyist for the organization and a candidate for elective state office.

¶10 The Ethics board also advises that upon assuming office in January 2009, 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 contract that predates your candidacy

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