
1993 Wis Eth Bd 10
LOBBYING AND LOBBYISTS

A. Regardless of whether a lobbyist is acting on behalf of the organization that employs the lobbyist or independent of it, the lobbyist need not account to the Ethics Board:

1. For time the lobbyist spends participating as a member in the deliberations either of a rule-making advisory committee established by a state agency under §227.13 or of a committee of the Legislature or
2. For time the lobbyist spends providing information to a state agency official in response to the official's request.

B. Otherwise the lobbyist should account for all the time he or she is engaged in attempting to influence state legislation¹ or an administrative rule² on his or her employer's behalf, even if the information the lobbyist provides was requested by a legislator.

C. A lobbyist is not obliged to account to the Ethics Board for activities:

1. That are unrelated to influencing state legislation or administrative rules or
2. That the lobbyist undertakes independent of his or her employer's interests and not as its representative.

OEB 93-10 (November 23, 1993)

Facts

[1] This opinion is based upon these understandings:

- a. You are a lobbyist.
- b. You serve on a number of governmental and private boards, committees, and the like that deal with issues related to your lobbying activities.

¹ Including the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any bill, resolution, amendment, report, nomination, administrative rule or other matter by the legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a legislator or employee of the legislature acting in an official capacity and also means the action of the governor in approving or vetoing any bill or portion thereof, and the action of the governor or any agency in the development of a proposal for introduction in the legislature. §13.62(8), *Wisconsin Statutes*.

² Including the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by an agency of a rule promulgated under chapter 227. §13.62(1), *Wisconsin Statutes*.

- c. You are regularly asked by members of the legislature and state agency officials to discuss specific legislative initiatives.

Questions

[2] The Ethics Board understands your questions to be:

1. Which of your activities as a member of various government bodies and private organizations are reportable by your employer as lobbying activities?
2. Are your discussions with legislators and state agency officials reportable when it is they that have asked to speak with you?

Discussion

ACCOUNTING FOR ACTIVITIES TAKEN AS A MEMBER OF A STATE GOVERNMENT ENTITY

[3] Wisconsin's lobbying law defines "lobbying" as

the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employee, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.

Section 13.62(10), *Wisconsin Statutes*. The lobbying law requires organizations that employ a lobbyist to provide, semi-annually:

A contemporaneous record disclosing the time and resources spent on each attempt to influence legislative or administrative action in each subject area. The contemporaneous record . . . shall include an itemization of the time and resources spent on research and preparation, the time spent meeting with [state officials and employees], and any other activity which includes lobbying.

Section 13.68(1)(c), *Wisconsin Statutes*.

[4] Two exceptions exist with respect to a lobbyist's service on a state-created body: [1] § 13.621(1)(e), *Wisconsin Statutes*, specifically exempts from the lobbying law's coverage an individual's participation as a member of an ad hoc advisory committee established by a state agency under §227.13 to advise with respect to rule making. [2] The same section also exempts participation

as a member of a committee of the legislature, such as a special study committee of the legislative council.³

[5] Apart from these two exceptions, you should report the time you spend on your employer's behalf preparing for and making communications with state officials to influence legislation and administrative rule making. This may include time you spend meeting with coalition partners, trade association representatives, private groups of individuals from similar businesses, and the like if the time is related to your employer's lobbying activities. *See* 1992 Wis Eth Bd 16. You need not report time you spend on other matters unrelated to rule making or legislation. Begin reporting time you spend in research and discussion of issues when you intend or reasonably expect to attempt to influence legislation or rules with respect to those issues.

[6] Of course, lobbying, by definition, deals only with attempts to affect state legislation or administrative rules. You may, even on your employer's behalf, be involved in creating, assessing, and implementing programs of the various state authorities, boards, councils and committees about which you have asked and still have nothing to report to the Ethics Board as long as you do not participate in the formation or modification of state legislation or administrative rules. To the extent that you are involved as a member of those bodies in the formation or modification of state legislation or administrative rules, you should account to the Ethics Board for that time unless you can clearly and convincingly demonstrate that your actions are independent of your employer's interests and that your employer does not compensate you for that time.⁴

ACCOUNTING FOR REQUESTS FROM STATE AGENCIES

[7] Wisconsin's lobbying law exempts from reporting the time you or your employer spend responding to requests for information from a state agency.⁵

³ Section 13.621(1)(intro.) and (e), *Wisconsin Statutes*, provides:

13.621 Exemptions. (1) COMPLETE EXEMPTION FOR CERTAIN CONDUCT. This subchapter does not apply to the following activities:

* * * * *

(e) Participation as a member in the deliberations of a committee under s. 227.13 or any committee of the legislature.

⁴ To the extent that a member of a state board, council, or authority, acts independent of his or her private employer and not as the employer's representative or agent, the lobbying statutes are inapposite. *See* 1992 Wis Eth Bd 06. This is a question of fact. If a member of a board, council, or authority is already a lobbyist, is being paid by an employer or client while attending the meetings of the public body, and is involved in influencing legislation or rules in areas of concern to the employer, the lobbyist's time likely should be reported by his or her employer. In contrast, if the individual exercises independent judgment, is not paid for the time spent attending meetings, and is involved in an official capacity with issues in which the employer has no interest, service as a member of the public body is unlikely to include lobbying on behalf of an employer.

⁵ Section 13.621(1)(intro) and (f), *Wisconsin Statutes*, provides:

This exemption applies only to requests from agencies and not from the legislature. See Secretary of State Formal Opinion #32 (January 31, 1985).

Advice

[8] A. Regardless of whether a lobbyist is acting on behalf of the organization that employs the lobbyist or independent of it, the lobbyist need not account to the Ethics Board:

1. For time the lobbyist spends participating as a member in the deliberations either of a rule-making advisory committee established by a state agency under §227.13 or of a committee of the Legislature or
2. For time the lobbyist spends providing information to a state agency official in response to the official's request.

[9] B. Otherwise the lobbyist should account for all the time he or she is engaged in attempting to influence state legislation⁶ or an administrative rule⁷ on his or her employer's behalf, even if the information the lobbyist provides was requested by a legislator.

[10] C. A lobbyist is not obliged to account to the Ethics Board for activities:

1. That are unrelated to influencing state legislation or administrative rules or
2. That the lobbyist undertakes independent of his or her employer's interests and not as its representative.

13.621 Exemptions. (1) COMPLETE EXEMPTION FOR CERTAIN CONDUCT. This subchapter does not apply to the following activities:

* * * * *

(f) Requests by an agency official for information from any person and the furnishing of the information by that person, or requests by any person for information from any agency official and the furnishing of the information by that official.

⁶ Including the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any bill, resolution, amendment, report, nomination, administrative rule or other matter by the legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a legislator or employee of the legislature acting in an official capacity and also means the action of the governor in approving or vetoing any bill or portion thereof, and the action of the governor or any agency in the development of a proposal for introduction in the legislature. §13.62(8), *Wisconsin Statutes*.

⁷ Including the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by an agency of a rule promulgated under chapter 227. §13.62(1), *Wisconsin Statutes*.