
1996 Wis Eth Bd 7
LOBBYING

A lobbying organization may, consistent with Wisconsin's lobbying law, purchase services from a business wholly owned by a state legislator only if the organization's offer to purchase can reasonably be said to be available to the general public. Even if the organization can demonstrate that its offer to purchase is available to the general public, the better course would be for the organization not to engage in business with a company wholly owned by a state legislator unless the organization is satisfied that its doing so would not undermine the public's confidence in the legislator's financial independence from the organization. OEB 96-7 (April 25, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. Your organization is a registered lobbying principal in Wisconsin.
- b. The organization has, since 1986, purchased business services from a Wisconsin - based company.
- c. The type and volume of work that the organization purchases from the company has remained about the same since 1986.
- d. Subsequent to the establishment of this business relationship, the business was purchased by an individual who later was elected to Wisconsin's legislature, so that now, the individual who owns the company is a member of Wisconsin's legislature.

Question

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

To what extent do laws administered by the Ethics Board restrict the continued business relationship between your organization and a member of Wisconsin's legislature?

Discussion

[3] The statute most pertinent to your question is Wisconsin's lobbying law, §13.625, *Wisconsin Statutes*. Reduced to its elements, that section provides:

No lobbying principal
May furnish
Anything of pecuniary value
To an elective state official, and

An elective state official
May not accept
Anything of pecuniary value
From a lobbying principal.¹

[4] Your organization is a registered lobbying principal in the State of Wisconsin. The individual who owns the company, by virtue of his being a member of Wisconsin's legislature, is a state public official. Payment of money for business services is something of pecuniary value that the organization is furnishing to the legislator's company. This is so even though the company may be exchanging consideration of equal value. The Attorney General has said that the lobbying law's restriction applies to situations in which items or services are bought and sold between a lobbying principal and an elective state official for fair consideration, as well as instances in which a principal gives items or services for free to an official. 80 Op. Att'y Gen. 205 (1992); 77 Op. Att'y Gen. 160 (1988) (receipt of compensation from a principal in exchange for services rendered is barred by the lobbying law).²

¹ Section 13.625, *Wisconsin Statutes*, provides, in relevant part:

13.625 Prohibited practices. (1) No lobbyist may:

(b) Furnish to any agency official or legislative employe of the state or to any elective state official or candidate for an elective state office, or to the official's, employe'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 employe 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 See also, e.g., 1991 Wis Eth Bd 3. As the Ethics Board has said in the past, the law's purpose is to draw a clear line barring private economic transactions between (1) state officials and

[5] The next question is whether, by furnishing money to the company, your organization is furnishing that money to the legislator. You have indicated that the legislator owns the company. In this circumstance, the lobbying law's prohibition applies to the transaction about which you have asked.³ The company is, in essence, the legislator's alter ego and he is the ultimate and direct beneficiary of the company's transactions. The Ethics Board must look at the reality of the situation. The lobbying law prohibits a principal from doing indirectly that which it is prohibited from doing directly.⁴ The Attorney General has stated, in a context similar to that presented by your question, that:

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.

80 Op. Att'y Gen. 205, 208 (March 23, 1992).

[6] Finally, the lobbying law provides an exception that permits a principal to furnish an item or service to a state official "which is also made available to the general public." §13.625(2), *Wisconsin Statutes*.⁵ The facts available to us do

lobbyists and (2) businesses and organizations that pay lobbyists to influence those same officials. Thus, the Board has advised that an elected official should not participate in an investment opportunity by purchasing stock offered by a lobbyist (1991 Wis Eth Bd 3); should not sell stock in a closely held corporation to a lobbyist (1992 Wis Eth Bd 5); and should not provide professional services to a principal or accept any compensation related to services provided by the official's employer to a principal (1992 Wis Eth Bd 26).

³ See 1996 Wis Eth Bd 1.

⁴ On several occasions the Board has addressed situations in which the question concerned the effect, if any, of the existence of an intermediary between a lobbying principal and a state official. See, e.g., 1993 Wis Eth Bd 4; 1992 Wis Eth Bd 29; 1992 Wis Eth Bd 27.

⁵ The phrase "general public"

need not be interpreted as including everyone in the world or even all residents of Wisconsin. On the other hand, something is not made available to the general public simply because the prerequisites to receiving it do not turn on state employment. Something is available to the general public only if it is accessible to the general public.

not provide a basis for finding that your organization buys services from the general public on similar terms so that the purchase falls within the exception in §13.625(2). It appears to be a business transaction that the organization specifically requests the legislator's company to perform; not the company's response to the organization's request for a bid or proposal for all to respond to. If that is so, then the lobbying law bars the transactions about which you have asked.⁶ The organization should not proceed to purchase services from a business wholly owned by the legislator unless the organization can clearly and convincingly demonstrate that its business is made available to the general public through an orderly, established competitive bid process that gives no special advantage to a business owned by a state official.

SUPPLEMENTAL OPINION

By letter dated December 20, 2006, the Ethics Board supplemented this opinion by advising its requestor:

To the extent that our letter permitted the inference that you could do business with lobbying principals we withdraw that directive. Our inquiry has led us to conclude that organizations obtaining services of the type you sell do not engage in the type of bid process the Board had envisioned.

See American Mut. Liability Ins. Co. v. Fisher, 58 Wis. 2d 299, 303, 206 N.W.2d 152 (1973). Whether something is available to the general public will always be a question of fact.

* * *

[S]omething is available to the general public if:

1. It is available to anyone who wants it and who meets the criteria for eligibility;
2. The criteria are: (a) established and readily identifiable; and (b) drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employe or elective state official; and
3. There is no offer or notice of availability directed to an agency official, legislative employe or elective state official with the effect of conferring an advantage not also given others who meet the criteria.

80 Op. Att'y Gen. 205, 212-13 (1992).

⁶ The Board is aware that some transactions of the type about which you have asked have already occurred. Because of the Board's desire to encourage state government officials to seek the Board's counsel in order to address issues in a way that will promote citizen's confidence in Wisconsin's government, in this instance, in which you have brought a matter to the Board's attention and sought the Board's advice, the Board prefers to act in a way that will address any similar situations in the future, rather than to seek redress for activities that have occurred.