
1996 Wis Eth Bd 8
LOBBYING LAW

A lobbying principal may not furnish a legislator transportation to visit a facility in another state. A principal may make transportation available to the state under either of the following circumstances: (1) the State pays the full cost of the transportation; or (2) the State procures the transportation, at any or no cost, for a governmental purpose neither at the behest of a specific governmental official-beneficiary nor with the intention of a specific governmental official's benefiting from the procurement.

OEB 96-8 (June 3, 1996)

Facts

[1] This opinion is based on these understandings:

- a. You are a member of the Legislature.
- b. A business that employs a lobbyist has offered to fly you to another state in its corporate jet to study the operations of a business located there.

Questions

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

Are statutes administered by the Ethics Board an impediment to a lobbying principal providing transportation to you from Wisconsin to another state and return to facilitate your review of the operations of a business located in that state?

Discussion

[3] *Wisconsin Statutes* are clear and direct in forbidding a business that pays a lobbyist to try to influence legislators' actions to furnish transportation to those same legislators.

Section 13.625, *Wisconsin Statutes*, provides in pertinent part:

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, except that a lobbyist may make a campaign 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 . . . elective state official . . . may solicit or accept anything of pecuniary value from a lobbyist or principal

[4] Accordingly the Ethics Board recommends that the lobbying principal not furnish you with transportation as it has proposed.

[5] You have asked if the answer would differ if you paid the lobbying principal for your transportation. That course is not available. The statute forbids a lobbying principal to furnish you with transportation. Whether you pay anything to the principal is of no consequence. The Attorney General has spoken to this very issue and his response is unequivocal:

[There] is persuasive evidence that the Legislature wanted to prohibit the furnishing of a thing of pecuniary value even if something of pecuniary value was furnished in return.

* * *

As you note in your request, if the statute were interpreted as permitting the acceptance of items in exchange for fair value, the Ethics Board would need to determine the fair market value of goods or services exchanged. . . . The potential for abuse inherent in that interpretation is obviated by giving the statute its common and ordinary interpretation. I conclude, therefore, that the prohibition on furnishing things of pecuniary value also prohibits the sale of such things to or purchase of such things from state officials.

80 Op. Att'y Gen. 205 (1992).

[6] Of course you may purchase and use any of the services that the lobbying principal makes available to the general public. The statute is directed at a lobbying principal's furnishing transportation and other items

and services to the government officials it tries to influence that the principal does not also make available to the general public.*

[7] You have also asked if the answer would differ if it could objectively be said that the lobbying principal would not furnish transportation to you but instead would furnish transportation to the state of Wisconsin. Yes, it would; the lobbying law restricts a lobbying principal from furnishing anything of pecuniary value to a state official, but not to the State of Wisconsin. As you will readily appreciate, this is a factual question.

[8] The Ethics Board will presume that transportation or other services and items are furnished to the State of Wisconsin and not to an identifiable state official as long as they are clearly for a governmental purpose and either:

- a. STATE PAYS COST OF ACQUIRING SAME OR SIMILAR SERVICE. The State of Wisconsin pays the principal the price at which the principal normally provides the same item or service (if it does) or the price of the state's purchasing similar services or items of the same quality on the open market, whichever is greater. In the case you have asked about, the price may be calculated by (1) determining from the various air charter companies the cost of chartering a plane of the type proposed by the principal and outfitted in a similar manner and a pilot for the same itinerary, and (2) dividing the cost among the number of passengers so that the State of Wisconsin will pay the cost it would incur if the State had chartered a comparable plane with pilot and sought reimbursement from your traveling companions.

* You have asked why the Ethics Board has not acted aggressively to enforce the statutory prohibition against lobbying organizations that offer government officials the option of purchasing meals or refreshments at meetings which officials attend, but not as speakers or participants in the program. With respect to these cases, the Board has recognized the Legislature's injunction, in §13.61, *Wisconsin Statutes*,

that the operation of an open and responsible government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues.

Based on this expressed policy, the Board has stated that it will not apply the lobbying law to prevent state officials who pay their own costs from participating in conferences, seminars, and receptions intended for and conducive to discussion of state governmental policies and processes. (Ethics Board meeting of March 8, 1995).

- b. STATE PROCURES FREE OR DISCOUNTED SERVICES FROM A PRINCIPAL WITHOUT THE SERVICES BEING PROCURED FOR OR AT THE BEHEST OF A SPECIFIC GOVERNMENTAL OFFICIAL. The State of Wisconsin procures free or discounted transportation or any other thing of pecuniary value from a principal for a governmental purpose neither at the behest of a specific governmental official-beneficiary nor with the intention of a specific governmental official's benefiting from the procurement. This avenue would be available if, by way of example, the state had negotiated a deal for use of the lobbying principal's plane for any state purpose in an arm's length agreement free from suggestion that the lobbying principal is furnishing an advantage to a specific governmental official. The facts in the circumstance you have asked about demonstrate that the issue is whether or how the lobbying principal; can furnish transportation to you, an elective state official. A principal's furnishing transportation to an elective state official is precisely what the statute forbids. This alternative is not an appropriate option in this instance.

[9] In summary, (1) a lobbying principal may not, under Wisconsin's lobbying law, furnish you with the transportation you asked about; (2) the State of Wisconsin, consistent with statutes the Ethics Board administers, may purchase transportation from a lobbying principal in accordance with the formula offered above.

Advice

[10] The Ethics Board advises that a lobbying principal not furnish you transportation to visit a facility in another state. A principal may make transportation available to the state under either of the following circumstances: (1) the State pays the full cost of the transportation; or (2) the State procures the transportation, at any or no cost, for a governmental purpose neither at the behest of a specific governmental official-beneficiary nor with the intention of a specific governmental official's benefiting from the procurement.