

---

**1999 Wis Eth Bd 6**  
LOBBYING AND LOBBYISTS

---

The Ethics Board advises that an agency official may not accept compensation, or any other thing of pecuniary value, for serving on the board of directors of a business corporation that is a wholly-owned subsidiary of another corporation that is a lobbying principal if the corporate parent controls the official's selection to the subsidiary's board.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You have been appointed to the governing board of a state agency.
- b. You serve as a director of a business corporation and receive director's fees for such services.
- c. The business is a wholly-owned subsidiary of another corporation.
- d. The parent corporation is a registered lobbying principal in Wisconsin.
- e. You have indicated that the subsidiary corporation operates independently of its corporate parent.
- f. You have also indicated that the parent corporation, as the sole stockholder of the subsidiary, must approve the subsidiary's directors.

Question

¶ 2 The Ethics Board understands your question to be:

Do Wisconsin Statutes permit you to receive director's fees from the corporate subsidiary while you are a member of the state board?

Discussion

¶ 3 Wisconsin’s lobbying law, §13.625, *Wisconsin Statutes*, is the provision of laws administered by the Ethics Board most relevant to your question. Section 13.625, *Wisconsin Statutes*, provides that no lobbying principal may furnish to an agency official, and no agency official may accept from a principal, anything of pecuniary value.<sup>1</sup> This prohibition applies whether or not an official furnishes items or services of equivalent value in exchange.<sup>2</sup>

¶ 4 You will be an agency official if you serve on the state board.<sup>3</sup> Compensation in the form of director’s fees is something of pecuniary value. ¶

---

<sup>1</sup> Section 13.625, *Wisconsin Statutes*, in relevant part, provides:

**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).

<sup>2</sup> 80 Op. Atty. Gen. 205 (1992) (§13.625 does not allow fair value compensation of services by a principal to an official covered by the lobbying law); 77 Op. Atty. Gen. 160 (1988).

<sup>3</sup> Section 13.62 (3), *Wisconsin Statutes*, provides:

**13.62(3)** "Agency official" means a member, officer, employe or consultant of any agency who as part of such person's official responsibilities participates in any administrative action in other than a solely clerical, secretarial or ministerial capacity.

The board to which you have been appointed is an agency. §13.62(2), *Wisconsin Statutes*. "Administrative action" means the proposal, drafting, development, and consideration of a

¶ 5 A “principal” means any person who employs a lobbyist. §13.62(12), *Wisconsin Statutes*. Under general statutory provisions, a “[p]erson” includes all partnerships, associations and bodies politic or corporate.” §990.01(26), *Wisconsin Statutes*. If the corporation on whose board of directors you serve were itself a principal, you could not accept compensation for serving on the board of directors. Here, the corporation does not itself employ a lobbyist but it is a wholly-owned subsidiary of a corporation that does.

¶ 6 The Ethics Board consistently has said that a lobbying principal may not furnish indirectly through an agent, intermediary, or alter ego that it controls, items or services that it otherwise may not furnish directly.<sup>4</sup> For example, we have said that the statute means that an official may not accept compensation from an organization that a lobbying principal has established merely as a vehicle to act on its behalf or to operate under its control.<sup>5</sup>

¶ 7 In a 1994 opinion, the Ethics Board said that a company that is a subsidiary of a lobbying principal may not compensate an official unless the official can demonstrate that the subsidiary operates free from the control of the parent in the decision to hire the official.<sup>6</sup> You have said that the corporation on whose board of directors you serve operates independently of its corporate parent. However, you have also indicated that as the sole shareholder, the corporate parent approves the directors of the subsidiary corporation, including you. This is the key fact in this matter because it means a lobbying principal, in law and in fact, has appointed you to a position from which you derive financial gain.

---

rule under

Ch. 227, *Wisconsin Statutes*. §13.62(1), *Wisconsin Statutes*. The board promulgates administrative rules.

<sup>4</sup> See, e.g., 1996 Wis Eth Bd 17, ¶15 (a principal may not reimburse a member’s campaign contribution that the principal would be prohibited from furnishing); 1992 Wis Eth Bd 29, ¶9 (a principal may not furnish a campaign contribution from funds that come from another source if it has control over those funds).

<sup>5</sup> 1993 Wis Eth Bd 4, ¶8.

<sup>6</sup> 1994 Wis Eth Bd 9. This comports with 78 Op. Att’y Gen. 5 (1989), in which the Attorney General stated that the legal fiction of the separate identity of wholly owned subsidiary corporations may be disregarded (1) where the subsidiary corporation is so organized that it is merely an instrumentality or adjunct of the parent corporation, (2) the subsidiary is a mere business conduit for the parent or there is such a unity of ownership and interest that the separate identity of the parent and subsidiary does not exist, or (3) where the parent controls and utilizes the subsidiary to commit a wrong, including violation of statutory mandates or duties. 78 Op. Att’y Gen. 5, at 8, *supra*.

1999 Wis Eth Bd 06

Advice

¶ 8 The Ethics Board advises that you may not accept compensation, or any other thing of pecuniary value, for serving on the board of directors of a business corporation as long as its corporate parent, a lobbying principal, controls your selection to the board.

WR1058