



***ETHICS CODE
REQUIREMENTS***

INFORMATION BULLETIN 99-5*

INTRODUCTION

This Bulletin provides information on the Code of Ethics for State Public Officials. The Bulletin is intended to inform new legislators and other interested persons, in general terms, of the requirements of the Ethics Code, particularly as those requirements relate to the office of Wisconsin legislator.

Wisconsin legislators are subject to the Ethics Code. The Code contains disclosure requirements, standards of conduct, enforcement procedures and penalties for its violation. The standards of conduct under the Ethics Code are, for the most part, stated in the form of general principles, rather than in the form of specific, detailed regulations. Consequently, to predict the possible application of the Ethics Code in a specific situation requires consideration of all the relevant facts of that situation.

The comments regarding the ethics code contained in this Bulletin should be viewed only as a general description of, and guide to, the statutory provisions. The actual statutes, rules and opinion summaries, and the Ethics Board itself, should be consulted when questions arise. See subch. III of ch. 19, Stats.; the rules promulgated by the Ethics Board (Wis. Adm. Code, ch. Eth); and the opinions published by the Ethics Board (Eth. Bd. Ops.; copies of the opinions may be obtained from the Ethics Board). In addition, the Ethics Board publishes a number of "Guidelines" containing information and general guidance concerning the Ethics Board, statements of economic interests, standards of conduct under the Ethics Code and enforcement of the Code. The Guidelines are available from the Ethics Board.

Item 7., of this Bulletin sets forth frequently asked questions, with answers, concerning the application of the Ethics Code to legislators. The examples are intended to provide general assistance to Legislators regarding how the Ethics Code applies to certain situations which frequently arise during the course of a legislator's term. However, since the application of the Code is fact-dependent, and a variation in facts can change the application of the Code, the answers to the questions should be used for general guidance only.

* This Information Bulletin was prepared by Don Dyke, Senior Staff Attorney.

Please note that Legislative Council Information Bulletin 99-4, dated January 1999, describes the key provisions of the Lobbying Law which relate to legislators. Further note that neither of these Bulletins identifies nor discusses those laws *outside* the Ethics Code and lobbying laws which also may apply to the conduct of a legislator. These restrictions are found primarily in the election laws and those Criminal Code provisions applicable to public officers and employees.

1. AGENCY ADMINISTERING THE ETHICS CODE

The Ethics Code is administered by the Ethics Board, a six-member body appointed by the Governor. The Executive Director of the Ethics Board, presently R. Roth Judd, serves at the pleasure of the Board.

The office of the Ethics Board is located at 44 East Mifflin, Suite 601, in the "AT&T Building." The telephone number of the Ethics Board is (608) 266-8123.

2. PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

a. What must be disclosed?

The Ethics Code requires disclosure by a legislator of certain financial interests. Legislators must disclose the following information regarding financial interests, as the information relates to themselves and, in most cases, their immediate family:

(1) Management and financial relationships with certain organizations, such as being a director, officer or trustee, holding a 10% or greater ownership interest or being an authorized representative or agent.

(2) Names of organizations in which securities are owned having a value of \$5,000 or more, categorized by whether the approximate value of those securities is, or is not, more than \$50,000.

(3) Names of creditors to whom \$5,000 or more is owed, categorized by whether the amount owed is, or is not, more than \$50,000.

(4) The identity of and interest in real property holdings in Wisconsin, other than a principal residence.

(5) The identity of direct, and certain indirect, sources of income of \$1,000 or more.

(6) Names of donors (nonrelatives) of gifts of over \$50.

(7) Lodging, transportation, money or other items, having a value of over \$50, which are received from one source for a published work, presentation of a talk or participation in a meeting. (See, also, the discussion under item 3., below.)

b. How are disclosures made?

The financial interests which must be disclosed under the Ethics Code are set forth in a form, called "Statement of Economic Interests." The Ethics Board mails copies of the form, and detailed instructions for completing the statement, directly to legislators or candidates for the Legislature in advance of the deadline for filing the statement.

A Statement of Economic Interests is retained by the Board for six years, or three years after a person ceases to be a state public official. The statement is open for public inspection at the Ethics Board offices while on file. The Ethics Board must notify the person who filed the statement of the full name and address of any person who inspects his or her statement.

c. When must the statement be filed?

A candidate for the Legislature must file the Statement of Economic Interests within three days after the deadline for filing nomination papers. Subsequent filings must be updated annually. The Ethics Board furnishes appropriate forms, on a timely basis, to assist legislators in complying with the filing deadlines.

3. TRANSPORTATION, LODGING, MEALS, FOOD OR BEVERAGE AND HONORARIA AND RELATED EXPENSES

a. What transportation, lodging, meals, food, beverage or other costs may be accepted, retained or reimbursed?

The Ethics Code specifically provides that, with certain exceptions, a legislator may not accept or retain any transportation, lodging, meals, food or beverage, or reimbursement for those items. Under the restriction, acceptance of these items is prohibited regardless of whether the acceptance could be expected to influence or reward a public official's actions. The Code's exceptions to the restriction are as follows:

(1) A legislator may receive and retain from the state, or on behalf of the state, transportation, lodging, meals, food or beverage, or reimbursement therefor, or payment or reimbursement of actual and reasonable costs, that the legislator can show by clear and convincing evidence were incurred or received on behalf of and for the benefit of the state and not primarily for the private benefit of the legislator or any other person.

(2) A legislator may receive and retain transportation, lodging, meals, food or beverage, or reimbursement for those items, or payment or reimbursement of other costs, from a political committee as permitted under ch. 11, Stats., Wisconsin's campaign financing law.

In addition to the above exceptions to the prohibition against receipt of or reimbursement for transportation, lodging, meals, food or beverage, the Ethics Code allows, under certain circumstances, the receipt of honoraria and expenses for a published work, presentation of a talk or participation in a meeting. The circumstances are described immediately below.

b. What honoraria and expenses may be received and retained?

The Ethics Code encourages legislators, and other public officials, to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings for the purpose of discussing and interpreting legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

Under the Ethics Code, a legislator may receive and retain actual and reasonable expenses and reasonable compensation for a published work or for the presentation of a talk or participation in a meeting if:

- (1) The activity for which the expenses and compensation received is related to the discussion and interpretation of governmental issues; and
- (2) The payment is made or arranged by the organizer of the event or the publisher of the work.

Note that under the Lobbying Law, receipt of *compensation* by a legislator under the above circumstances is generally prohibited if payment is made by a lobbyist or the lobbyist's employer. (See, generally, items C. and D., of Legislative Council Information Bulletin 99-4, dated January 1999.)

c. How do the above restrictions affect a legislator in his or her private capacity?

A legislator may receive and retain anything of value if:

- (1) The activity or occasion for which the thing of value is given is unrelated to the legislator's use of the state's time, facilities, services or supplies not generally available to all citizens of the state;
- (2) The legislator can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office; and
- (3) The payment was made for a purpose unrelated to the discussion and interpretation of state governmental issues.

Again, however, if the thing of value is from a lobbyist or employer of a lobbyist, the Lobbying Law may prohibit retention of the thing of value. See item 9., below.

d. What honoraria and expenses must be disclosed?

Fees, honoraria, expenses or other things of pecuniary value (in excess of \$50 but excluding incidental food or beverage) received during the taxable year by a legislator for a published work, presentation of a talk or participation in a meeting must be *reported* on the next year's Statement of Economic Interests *unless*:

- (1) Whatever is received is returned to the payor within 30 days of receipt;
- (2) The payor has been identified, on the legislator's Statement of Economic Interests, as a source of income;
- (3) The legislator can show by clear and convincing evidence that what was received was unrelated to and did not arise from the legislator's position and was made for a purpose unrelated to the purposes described in the first paragraph under "b.," above;
- (4) The amount received was previously reported to the Ethics Board by the legislator;
or
- (5) The amount (e.g., expenses) is paid by the Legislature.

4. CONDUCT GENERALLY PROHIBITED UNDER THE ETHICS CODE

Summarized below are the general categories of conduct generally prohibited under the Ethics Code. In addition to these categories of prohibited conduct, the Ethics Code addresses in a more general fashion "conflicts of interests," discussed under item 5., below.

a. Use of office for private benefit.

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of *substantial value* for the *private benefit* of the legislator, the legislator's immediate family or organizations with which the legislator or legislator's immediate family has certain statutorily specified relationships.

"Anything of value" is defined under the Ethics Code as "any money or property, favor, service payment, advance, forbearance, loan, or promise of future employment," but does *not* include: compensation and expenses paid by the state; honorariums and expenses otherwise allowed under the Code; political contributions which are reported under ch. 11, Stats., Campaign Financing; or hospitality extended for a purpose unrelated to state business by a person other than an organization. While "anything of 'substantial' value" is not defined under the Code, the Ethics Board has indicated that the term should be contrasted with the idea of "nominal," or "token," value to determine whether, under a specific factual setting, anything of substantial value is involved.

b. Improper influence or reward for official actions.

A legislator is prohibited from offering or giving, or soliciting or receiving, anything of value, if it could reasonably be expected to influence or reward official actions.

c. Use of confidential information for private gain.

A legislator is prohibited from using confidential information, obtained by reason of or in the course of legislative activities, for the private gain of the legislator, the legislator's immediate family or any other person or organization.

d. Use of office for unlawful benefits, advantages or privileges.

A legislator is prohibited from using the position of legislator to influence or gain unlawful benefits, advantages or privileges for the legislator or others.

e. Entering into state contracts or leases.

A legislator is prohibited from entering into a contract or lease involving payments of more than \$3,000 within a 12-month period, which are made in whole or in part from state funds, *unless* written disclosure of the contract or lease is made to the Ethics Board and to the state department which is responsible for the contract or lease. This provision applies to state contracts or leases which may be entered into by the legislator, the legislator's immediate family or any organization in which the legislator or any member of the legislator's immediate family has a 10% or greater interest.

f. Representation of persons before state agencies.

A legislator is prohibited from representing persons before state agencies in an unofficial capacity and for compensation beyond the salary or other reimbursement to which the legislator is entitled by law, *except* under the following circumstances:

- (1) In contested cases (as defined in ch. 227, Stats., Administrative Procedure) that involve a party, other than the state, with interests adverse to the interests of the party represented by the legislator;
- (2) At an open hearing at which a record is maintained;
- (3) In a manner that involves only ministerial actions by the agency; or
- (4) In a matter before the Department of Revenue or Tax Appeals Commission that involves representation of a client in connection with a tax matter.

The prohibitions regarding a legislator's representation of persons before state agencies is of particular relevance to legislators who are lawyers and to other legislators whose occupation may involve representation of clients--e.g., accountants.

g. Acceptance or retention of transportation, lodging, meals, food or beverage.

A legislator is prohibited from accepting or retaining any transportation, lodging, meals, food or beverage, except as expressly permitted under the Code. See item 3. a .and b., above.

5. CONFLICTS OF INTERESTS UNDER THE CODE

In addition to the prohibited conduct summarized in item 4., above, the Ethics Code contains more general prohibitions on conflicts of interests. Under the Code, *except in accordance with the Ethics Board's advice*, a legislator may *not*:

a. Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family or an organization with which the legislator is associated has a substantial financial interest.

b. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the legislator, the legislator's immediate family or an organization with which the legislator is associated.

It is important to note that the Code expressly provides that these prohibitions on conflicts of interests *do not prohibit* a legislator from: (i) taking any action concerning the lawful payment of salaries or employe benefits or reimbursement of actual and necessary expenses; or (ii) taking official action on any proposal to modify state law or the state Administrative Code--e.g., voting.

Note, however, that despite the plain statutory language stating that the conflict of interests prohibitions do not prohibit taking official action on any proposal to modify state law or administrative rules, the Ethics Board takes the position that Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of its position, the Board cites the prohibition against using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family or certain organizations with which the legislator or the legislator's immediate family is associated (See item 4. a., above). The latter prohibition appears independently of the conflicts of interests prohibitions. Under the Board's interpretation, the prohibition against using the office of legislator to obtain financial value or anything of substantial value may prohibit a legislator from taking official action on a state law or administrative rule unless:

1. The legislator's action affects a whole class of similarly situated interests and the legislator's interest is insignificant when compared to all affected interests in the class; and

2. The legislator's actions' effect on the legislator's private interests is neither significantly greater nor less than upon other members of the class.

Assembly and Senate rules require legislators to vote when present unless excused for "special cause." [Assembly Rule 77; Senate Rule 73 (1).] When in doubt on the propriety of a vote or other official action, consultation with the Ethics Board and legislative leadership is suggested. The Board's advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the Board, as described under item 12., below.

6. QUESTIONS TO ASK CONCERNING THE POSSIBLE APPLICATION OF THE CODE

The Ethics Code's general rules on prohibited conduct may be difficult to apply on a case-by-case basis. One way legislators can ensure compliance with the Code is to be sensitive to those situations which might invoke the application of the Code.

The questions listed below should be kept in mind in evaluating the application of the Ethics Code to a specific action. An affirmative answer to any one of these questions should prompt further inquiry regarding the possible application of the Code.

- a. Am I, my immediate family or an organization with which I am associated receiving anything of value for private benefit because I hold the office of legislator?
- b. Am I using the influence of my position as legislator to solicit something for the private benefit of me, my family or an organization with which I am associated?
- c. Am I, my immediate family or an organization with which I am associated receiving from a nonrelative anything of value for which we have not paid?
- d. Will an official action on my part possibly result in private benefit to me, my immediate family or an organization with which I am associated?
- e. Will the use of my staff or state facilities benefit me in my private capacity?
- f. Am I using the state's time, resources or facilities in my campaign for elective office?

7. FREQUENTLY ASKED QUESTIONS CONCERNING THE APPLICATION OF THE ETHICS CODE

Discussed below are questions frequently asked by legislators regarding the possible application of the Ethics Code. The questions, and the answers to them, are for *general* guidance. The assumptions of fact underlying the questions and answers are necessarily general and, therefore, the answers may not apply to a similar, but different, fact situation. These frequently asked questions are set forth to give legislators some guidance in dealing with Ethics Code application issues that commonly arise.

a. Presentation of talks.

(1) **Question:** May the sponsor of an event, at which a legislator presents a talk on state issues, reimburse the legislator for *reasonable expenses* (e.g., food, lodging and transportation) incurred in connection with the presentation of the talk?

Answer: The Ethics Code permits such reimbursement. If the combined value of the expense reimbursement exceeds \$50 for the particular presentation, the identity of the payor may have to be disclosed in the next year's Statement of Economic Interests (see item 3. b., above).

(2) **Question:** May the sponsor of a meeting at which a legislator presents a talk relating to state issues give an *honorarium* to the legislator for the presentation of the talk and may the legislator retain the honorarium?

Answer: Retention of the honorarium is permitted under the Ethics Code, if the honorarium is “reasonable” and if the payment is made or arranged by the organizer of the event. The Ethics Board presumes that an honorarium of not more than \$100 is reasonable; an honorarium of more than \$100 may be reasonable, depending on the circumstances, but is not presumed so. **NOTE:** The lobbying laws may prevent the offering and acceptance of an honorarium, if a lobbyist or a lobbyist’s employer is involved.

b. Gifts.

Question: What gifts to a legislator from nonrelatives may be retained under the Ethics Code?

Answer: Calendars, pens and other small promotional items of nominal value may be retained by a legislator. Other gifts from nonrelatives, which are of more than token value, should not be retained by a legislator unless given to him or her because of a clearly established business or social relationship which is independent of the legislator’s holding of public office. See item 2. a., above, for the reporting requirement concerning gifts from nonrelatives. **NOTE:** If a gift is given by a lobbyist or a lobbyist’s employer, it may be prohibited under the lobbying laws under any circumstance.

c. Sporting events, parties and galas.

Question: May a legislator attend sporting events, parties, galas, opening ceremonies and other events to which the legislator is invited?

Answer: A legislator may attend such events under the Ethics Code but should pay the ordinary cost of admission to the event, if the invitation was extended because of the legislator’s public office, rather than because of a clearly established independent business or social relationship. This answer also applies to the cost of admission to a political campaign fund-raiser; a legislator should not accept an admission ticket to such an event which was purchased by someone else.

d. Campaign work by staff.

Question: May a legislator’s staff work on the legislator’s campaign?

Answer: The Ethics Code prohibits a legislator’s staff from working on the legislator’s campaign during state time or with the use of state facilities.

e. Telephones and other office equipment.

Question: What constraints does the Ethics Code place on a legislator's use of state telephones and other office equipment?

Answer: The Ethics Code permits the use of telephones and other office equipment by a legislator for public purposes. The private use of such equipment, including use for campaign activities (as opposed to political activities, which are unavoidable as a legislator), is prohibited. With regard to the use of state telephones, in particular, the state telephone lines should not be used for private purposes even if the legislator intends to reimburse the state; use of a personal calling card is suggested in such circumstances.

For a legislator, the distinction between public and private purposes often blurs; therefore, legislators should keep in mind the distinction between public and private purposes in connection with the use of telephones and other office equipment. Note, however, that, in general, the Ethics Board is not concerned with inconsequential violations of the Ethics Code or matters where no substantial private gain is involved. The best advice is to use sound judgment and, when in doubt, consult with the Ethics Board.

f. Books and subscriptions to periodicals.

Question: Legislators are sometimes offered free books and subscriptions to periodicals. Under the Ethics Code, is it appropriate to accept such books and subscriptions?

Answer: Acceptance of books and periodicals is appropriate under the Ethics Code if the book or periodical is pertinent to state issues and objectively can be considered for the use of the legislator in his or her public capacity. However, if the book or periodical is primarily of use for the private benefit of the legislator or his or her immediate family, then acceptance would not be appropriate under the Code.

8. WHO CAN ANSWER QUESTIONS CONCERNING THE POSSIBLE APPLICATION OF THE CODE?

If the questions concerning the possible application of the Ethics Code relate to an event for which there is a *sponsor*, the sponsor should be asked whether the event, and participation by legislators, has been cleared with the Ethics Board. If there is no sponsor or if the sponsor has not cleared the event with the Ethics Board, the ***Ethics Board*** itself should be consulted directly. (See item 12., below, regarding the availability of advisory opinions from the Ethics Board.)

9. RELATIONSHIP OF THE ETHICS CODE TO THE LOBBYING LAW

Since July 1, 1990, the Ethics Code and the Lobbying Law have both been administered by the Ethics Board. In addition to providing for combined administration of the Ethics Code and Lobbying Law, 1989 Wisconsin Act 338 made provisions of the two laws more consistent regarding the treatment of expense reimbursement.

If receipt and retention of expense reimbursement for the presentation of a talk or participation in a meeting related to state government issues is permitted under the Ethics Code, it is also permitted under the Lobbying Law, regardless of whether it is reimbursed by a lobbyist or an employer of a lobbyist. However, receipt of any other thing of value, including an honorarium, from a lobbyist or the lobbyist's employer is generally a violation of the Lobbying Law. In general terms, the Lobbying Law is concerned with *who* is involved (i.e., a lobbyist or a lobbyist's employer), while the Ethics Code is concerned with *what* is done and with the underlying *purpose* or *result* of particular conduct.

If a lobbyist or employer of a lobbyist is involved in an action or activity, *both* the Lobbying Law and Ethics Code should be consulted. If a lobbyist or employer of a lobbyist is not involved, the Lobbying Law need not be consulted. (See Legislative Council Information Bulletin 99-4, dated January 1999, for a discussion of the Lobbying Law.)

10. ENFORCEMENT OF THE ETHICS CODE

The Ethics Board has general *enforcement* responsibility for the Ethics Code. The Board is specifically empowered to adopt rules implementing the Ethics Code. The Board has authority to investigate possible violations of the Code, to determine whether a violation of the Code has occurred and to make various dispositions of violations of the Code, including the imposition of penalties.

Complaints of violations of the Code may be made to the Board by any person. In addition, the Board has authority to issue a complaint on its own motion. No action may be taken on any complaint which is filed later than three years after a violation of the Ethics Code is alleged to have occurred.

An *investigation* of a possible violation of the Ethics Code may be commenced if the Board has a reasonable basis for believing a violation of the Ethics Code has been committed or an investigation of a possible violation is warranted. Upon adoption of a resolution the Board may exercise subpoena power and formally question potential witnesses. At the conclusion of its investigation, the Board determines whether or not probable cause exists to believe that a violation of the Ethics Code has occurred. If the Board determines that there is probable cause, the Board may:

- a. Make a recommendation for *criminal prosecution* to the district attorney for the jurisdiction in which the alleged violation occurred; if the district attorney fails to commence prosecution within 30 days, make the recommendation to the Attorney General, who may then commence prosecution; or
- b. Issue an order setting a date for a *hearing* before the Board to determine whether a violation of the Ethics Code has occurred.

If the Board orders a hearing to determine whether a violation of the Ethics Code has occurred, it is conducted in accordance with the requirements of ch. 227, Stats. (Under that chapter, such a hearing would ordinarily be a contested case hearing.) A reserve judge is

appointed by the Ethics Board to serve as hearing examiner. After the hearing is concluded and the hearing examiner has made a recommendation, the Board makes a determination whether a violation of the Ethics Code has occurred. The Board must be persuaded by clear and convincing evidence (the so-called “middle burden of proof”) before it may find a violation of the Ethics Code.

If the Board finds that a violation of the Ethics Code has occurred, it is empowered to make a number of *orders* or *recommendations*, including:

a. In the case of a legislator, a recommendation that the legislator be censured, suspended or removed from office.

b. In the case of a legislator or other public official, an order requiring the accused to conform his or her conduct to the Ethics Code.

c. In the case of a legislator or other public official, an order requiring the accused to forfeit:

(1) Not more than \$500 for each violation of the disclosure requirements and the provisions relating to reporting and acceptance of honorariums, fees and expenses; or

(2) Not more than \$5,000 for each violation of other provisions of the Code relating to prohibited conduct.

Also, if the Board determines that the violator has realized economic gain as a result of the violation, the Board may order the person to *forfeit* the amount gained as a result of the violation.

In addition to the above formal powers, the Board has express authority to *compromise and settle* with a person alleged to have violated the Ethics Code, including settlement for a sum agreed upon by the Board and the alleged violator.

II. CRIMINAL PENALTIES FOR VIOLATION OF THE CODE

In addition to the civil forfeitures described under item 10., above, the Ethics Code contains *criminal penalties*. Any person who intentionally violates the Ethics Code may be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail, or both.

The criminal penalty does not limit the power of either house of the Legislature to discipline its own members or to impeach a public official.

12. ADVISORY OPINIONS

An important function of the Ethics Board is to give advisory opinions. Any legislator may request from the Ethics Board written advice regarding the propriety of any matter to which he or she is or may become a party. All requests for advisory opinions are confidential. No member or employe of the Ethics Board may make public the identity of the person requesting an advisory opinion or of persons mentioned in the opinion.

It is *prima facie* evidence of an intent to comply with the Ethics Code when a person refers a matter to the Board and abides by the Board's advisory opinion. A legislator may also request the Ethics Board to obtain an advisory opinion from the Attorney General on the application of the Code to any set of circumstances.

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