

Mitigating conflicting interests: private interest vs. public responsibility

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Standards of conduct for public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material.¹

ACTING IN AN OFFICIAL CAPACITY

MAKING POLICY. When a public official or a board, commission, or other body of which an official is a member is called upon to propose or to act on legislation to promulgate a rule or to issue a general policy, the official may participate in that action, even though the action will affect the official, a member of the official's immediate family, or an organization with which the official is associated², as long as:

- The official's action affects a whole class of similarly-situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official, of a member of the official's immediate family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

APPLYING POLICY. A public official should not, in an official capacity, participate in or perform any discretionary action with respect to the making, grant, or imposition of an award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official or a member of the official's immediate family or a business or organization with which the official is associated has a substantial financial interest, direct or indirect.³ In addition, a public official should not, in an official capacity, participate in a matter affecting a business or organization from which the official or a member of the official's immediate family receives substantial compensation or income.⁴

¹ See comparable statement concerning state government officials at §19.45(1), *Wisconsin Statutes*.

² "**Associated**", when used in connection with "business" or "organization" refers to a business or organization of which an individual or a member of the individual's household or immediate family is an officer, director, trustee, owner of a 10% or greater interest, or authorized representative. An individual is not associated with a business or organization merely because the individual is a member or employee.

³ §§19.45 (2) and 19.46 (1)), *Wisconsin Statutes*.

⁴ 1994 Wis Eth Bd 5.

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which a public official should not participate comes before the legislature, a board, commission, or other body of which the official is a member, the official should leave that portion of the body's meeting involving discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect the absence. The body's remaining members may review the matter and take whatever action they find appropriate.

ACTING IN A PRIVATE CAPACITY

APPLICATIONS, BIDS, AND CONTRACTS. Usually, a public official should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official has a private financial interest, direct or indirect, if the official is *authorized* to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf.⁵

REPRESENTING CLIENTS. A public official should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board, commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation.⁶

⁵ With limited exceptions, §946.13, *Wisconsin Statutes*, makes it a felony for a governmental official to negotiate or bid for or enter into a contract in which the official has a private pecuniary interest if at the same time the official is *authorized* to perform in regard to that contract some official function requiring the exercise of discretion. As long as private activity is not otherwise prohibited, departure from the usual rule may be justified in an occasional, sporadic, or infrequent case such as an official's action in a private capacity to protect or preserve a private interest of the official or the official's family.

⁶ §19.45 (3), *Wisconsin Statutes*, prohibits an official to accept anything of value that could reasonably be expected to influence official action or judgment. The disqualification from official action that would be required of a government official who accepted pay for being an advocate before the very government body to which his or her office pertains is a clear, direct, and reasonably foreseen effect upon official action. See also §19.45 (7) which restricts representation before other state agencies.