

The Basics of the Ethics Code for Local Public Officials

Wisconsin
Towns
Association

Getting Started

- Wisconsin Statutes 19.59 & 19.42:
 - Section 19.59 is the code; and
 - Section 19.42 is the definitions.
- Government Accountability Board (GAB) Opinions.
 - <http://gab.wi.gov/about/opinions/ethics>
- Properly utilize your town attorney.

Elements of s. 19.59(1)(a)

- No local public official
- May use his or her public position or office
- To obtain financial gain or anything of substantial value
- For the private benefit
- Of the official, a member of the official's immediate family, or an organization with which the official is associated.

“Anything of Value” s. 19.42(1)

- Any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment.
 - Anything of more than inconsequential or token value.
 - GAB has never set an exact dollar amount.
 - \$15 would be a problem. 2008 GAB 03.
 - Contrasted with “nominal value” (face value) and synonymous with “merchantable value” (salable value).
 - The donor’s cost is not relevant.
 - Value for service or product could be considered the cost of obtaining the equivalent from elsewhere.

“Associated” s. 19.42(2)

- Any organization in which an individual or a member of his or her immediate family:
 - is a director, officer or trustee;
 - or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity;
 - or of which an individual or a member of his or her immediate family is an authorized representative or agent.

“Immediate Family” s. 19.42(7)

- An individual’s spouse; and
- An individual’s relative by marriage, lineal descent or adoption
 - who receives, directly or indirectly, more than one-half of his or her support from the individual
 - or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

s. 19.59 analysis

- Also avoid participation on significant precedents affecting your own interests.
 - Participate on one matter that then practically determines a later matter concerning yourself.
- Local Public Official can NOT:
 - Both submit plans, proposals or bids in a private capacity AND
 - Participate in consideration of approval or rejection in a public capacity.

s. 19.59 analysis

- Public v. Private benefit
 - Only if expense would otherwise be borne by government is a transfer of that expense elsewhere a public benefit.
 - **Adopt a reimbursement of expenses policy.**
 - Always a conflict: benefits for your spouse.
- Incidental events and programs are a public benefit when:
 - Authorized by your government to attend the conference
 - Contribute to educational and learning opportunity
- Always a conflict: provided by a vendor to officials with power to purchase the vendor's goods

Not a Conflict

- When your participation or action on policy is neither forbidden nor antagonistic to public policy, then public policy favors that you exercise your duties.
- Unreasonable to believe any conflict if:
 - Official's office does not exercise any action at all;
 - Exercises only ministerial action;
 - Exercises action generally applicable to a broad class of interests;
 - The contribution is only of modest value.

Not a Conflict

- Legislative and quasi-legislative: matters of broad policy:
 - Ok to participate if all of the following:
 - You are part of a large class of similarly situated individuals;
 - Your interest is insignificant compared to all affected interests in the class;
 - The effect on you is neither greater nor less than other members of the class.
- But beware that quasi-judicial (applying law to facts) conflicts cannot be resolved as above.

What to do about gifts:

- Gifts of money or physical items to you because of your position are primarily public. Options:
 - Give money or gift to your government, another public entity or a charitable organization you are not “associated” with (but your government can’t sell it to you. s. 175.10);
 - Return the item to the donor; or
 - Pay the giver the value of the gift.
- Ok to keep because it’s “available to the public” is only when:
 - It is available to everyone who wants it and meets the eligibility criteria;
 - The criteria are established and readily identifiable; and designed without favoritism towards you;
 - There is no offer directed at you that confers an advantage the others don’t have.

Abstaining

- If you abstain from an agenda item:
 - Do NOT discuss;
 - Do NOT deliberate;
 - Do NOT vote;
 - Have the minutes reflect that you withdrew.
- Can always choose to abstain/cannot be made to vote.
- Cannot force another person to abstain.
- Even if do not have to abstain, a vote that undermines public confidence in the decision or government should be avoided.

Local Ordinance Option

- Section 19.59(1m):
 - Require candidates to file economic interest statements per s. 19.44;
 - Create local ethics board to administer the local code;
 - Provide for forfeitures of between \$100 to \$1,000 for each offense;
 - Could make more restrictive definitions in your code than the statutes.
 - But NOT less restrictive.

Getting a second opinion

- Section 19.59(5)
 - Anyone (official or not) can request an advisory opinion on a matter for which they are or may become a party.
 - Request is to local ethics board or governmental attorney.
 - Response is optional.
 - If request is accurate as to facts, than the act of the request is prima facie evidence of intent to comply with ethics laws.
- Section 19.59(6)
 - County Corporation Counsels, attorneys for local governmental units & statewide associations of local governments:
 - Can request interpretations of s. 19.59 from GAB.

Enforcement

- County District Attorney investigates complaints about local public officials. s. 19.59(8)
 - If no action after 20 days, can take complaint to DOJ.
 - Probably need to give DA longer than that though.
 - No s. 19.59(1)(br) complaints are allowed within 120 days of an election (promises/offers of influence).
 - Punishable by fines of up to \$1,000 plus return of whatever benefit was wrongfully received.

Final Thoughts

- No provision of the ethics codes absolutely bars anyone from service as a local public official.
- But, even the GAB recommends that persistent, frequent problems are best solved by either resigning the public position or cutting out the private activity causing the problems.
- You do in fact have the right to represent your own interests as long as you properly step away from your official capacity to do that.
- **This was the basics of the basics and there is a lot more to know, so remember to get help!!!**
- Thank you for watching.