

The Ethics Code for Local Public Officials

*Wisconsin
Towns
Association*

Annual Convention 2012

Today's Program

- What presents a conflict?
- What do you do about potential conflicts?
- How do you properly utilize your town attorney, i.e., take a precaution?
- Enforcement.

Sources of Authority

- Wisconsin Statutes 19.59 & 19.42:
 - Section 19.59 is the code; and
 - Section 19.42 contains important definitions.
- Government Accountability Board (GAB) Opinions.
 - <http://gab.wi.gov/about/opinions/ethics>
- Common Law (court decisions), miscellaneous statutes & local ordinances.

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.
- Just \$15 would be a problem. 2008 GAB 03.

“Anything of Value” s. 19.42(1)

- 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:
- It is an okay benefit to the **public** when:
 - The expense would otherwise be borne by the government so it is a transfer of that expense elsewhere and therefore a public benefit.
 - **Adopt a reimbursement of expenses policy per s. 60.321.**
 - Always a conflict: benefits for your spouse.

s. 19.59 analysis

- 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 **directly** by a vendor to officials with power to purchase the vendor's goods. However, an event sponsor can provide, arrange or sponsor a meal or drink.

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.
- The effects of action are uncertain, conjectural, inconsequential, attenuated, remote or speculative.
- Legal political contributions.
- Hospitality extended that is unrelated to official business by a person or public body.

Not a Conflict

- Official's office does not exercise any action at all;
- Official's office exercises only ministerial action;
- The contribution is only of modest value;
- Official's office exercises action generally applicable to a broad class of interests...

Not a Conflict

- Ok to participate in legislative and quasi-legislative matters of broad policy if **all** of the following apply:
 - 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.

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.

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.
- Gifts received because of your position, even if available to others for different reasons, are still unacceptable.

What to do about gifts:

- Ok to keep because it's "available to the public" 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.

What to do about gifts

- Bottom lines on gifts:
 - If you would like to have it because it seems kind of nice then you can't have it.
 - If you really don't care because it doesn't seem valuable and/or anyone can have one then you can have it.

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.

Common Law

- Public officer owes an undivided loyalty to the public whom he or she serves.
- Cannot simultaneously be both your own supervisor and subordinate.
- Officially adopting a version of parliamentary procedure can create further conflict obligations.

Additional Miscellaneous Statutes

- There is more to s. 19.59!
- Section 946.10 bribery;
- Section 946.11 travel;
- Section 946.12 misconduct;
- Section 946.13 private interest in public contract;
- Section 60.37(4) (towns);
- Section 66.0501;
- Section 175.10;
- Etc.

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.

Protect Yourself: Get 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, then the act of following such an opinion 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.

Final Thoughts

- No provision of the ethics code outright bars service as a local public official. See s. 19.45(1). Potential conflicts are always a case-by-case examination of the facts.
- 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.
- Questions?