WISCONSIN
CONFLICT OF INTEREST LAW
an overview
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Smell Test

• Conflicts of Interest situations can be avoided by using common sense and applying the "smell test."

• Bells and whistles should go off when an official, a member of the official's family or a business organization with whom the official is associated is involved in a transaction

• Step back, question and think - are there problems concerning my involvement?
State Code of Ethics for Local Governmental Officials

• Took effect in 1992

• **Municipal Officials Affected.** The state ethics code applies to "local public officials" who hold "local public office." Sec. 19.42(7w) and (7x), Stats.

• School Board members included
Prohibited Conduct

Use of Office for Private Gain.

- Public officials are prohibited from using their offices to obtain financial gain or anything of substantial value for the private benefit of themselves, their immediate families, or organizations with which they are associated. Sec. 19.59(1)(a), Stats.
Prohibited Conduct

Offering or Receiving Anything of Value.

No person may give and no public official may receive "anything of value" if it could reasonably be expected to influence the local public official's vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction. Sec. 19.59(1)(b), Stats.
Prohibited Conduct.

Taking Action Affecting a Matter in Which Official Has Financial Interest.

- Local officials may not take official action substantially affecting a matter in which the official, an immediate family member, or an organization with which the official is associated has a substantial financial interest. Nor may an official use his or her office in a way that produces or assists in the production of a substantial benefit for the official, immediate family member or organization with which the official is associated. Sec. 19.59(1)(c), Stats.
Abstaining from Official Action

• In situations where a local official should not participate:
  – the official should leave that portion of the body's meeting involving discussion, deliberations, or votes related to the matter.
  – And the body's minutes should reflect the absence.
Local Policies

- May require disclosure of economic interests
- May establish ethics boards
- May prescribe standards of conduct
Ethics Advisory Opinions

• An ethics board or attorney may issue a written advisory opinion. If the official follows the advice in the opinion, it is evidence of intent to comply with the law.
Penalties & Enforcement.

- Any person who violates the state ethics law may be required to forfeit up to $1,000.
- The law is enforced by the district attorney.
Participating in Policy Decisions

- an official may participate in an action in which he or she has a personal interest as long as: (a) the action affects a class of similarly-situated interests; (b) the interest of the official, an immediate family member an organization with which the official is associated not significant when compared to other members of the class; and (c) the effect of the action on the interests of the official, an immediate family member an organization with which the official is associated not significant when compared to other members of the class.
Receipt of Goods & Services

• Under the state ethics code, local officials may receive: (a) items and services that are unrelated to their public service; (b) payment or reimbursement for costs relating to their work as public officials; and c) items of insubstantial value.

• Under the state ethics code, local officials may not: (a) receive items or services offered because of their public position, unless the value of such items or services is insubstantial; (b) receive items or services that could reasonably be expected to influence their judgment or could reasonably be considered a reward for official action or inaction.
Seminars & Conferences

• Officials attending seminars/conferences may accept the meals and refreshments provided or approved by the event's organizer and approved by the local governmental unit.

• Officials should generally not accept food, drink or entertainment offered outside of the conference or activities at hospitality suites, receptions or similar activities.
Private Interest in Public Contracts (Section 946.13, Stats.)

General Prohibition.

• The statute generally prohibits municipal officials from having a private financial interest in a public contract.

• Local governing body members are generally prohibited from entering into a contract for goods, services, construction or employment with the municipality.
Prohibition Against Official Action

• A public official may not participate in the making of a contract in his or her official capacity if the official has a direct or indirect financial interest in the contract. Sec. 946.13(1)(b).

• Since this is a prohibition on official action, abstaining from voting on the contract will prevent violation.
Prohibition Against Private Action

• A public official may not in his or her private capacity negotiate or bid for or enter into a contract in which the public official has a direct or indirect financial interest if the official is "authorized or required by law to participate in his capacity as such officer or employee in the making of that contract." Sec. 946.13(1)(a).
• Under Sec. 946.13 (1)(a) a public official cannot avoid violating it merely by abstaining from voting
• This is because all that is necessary for a violation to occur is that the official be authorized to vote on or exercise discretion with regard to a contract in which the official has a private financial interest and the official has negotiated, bid for, or entered into the contract.
Exceptions:

• Contracts in which receipts and disbursements do not, in the aggregate, exceed $15,000 in any one year.

• Bankers who receive less than $10,000 per year for serving on the city council or village board are exempted, unless the banker's compensation is directly dependent on procuring public business
- Exceptions:

- Attorneys in a law firm that serves as legal counsel to the municipality who receive less than $10,000 per year for serving on the board are exempted, unless the individual has an interest in the law firm greater than 2% of its net profit or loss; the individual participates in the making of a contract between the municipality and the law firm; or the individual's compensation from the law firm is directly dependent on procuring public business.
Exceptions:

• There is also an exception from the prohibition on official action for persons who own no more than 2% of the stock of the corporation involved.
Penalty:

• Violation of the statute is a Class I felony and subjects the person to a fine of not more than $10,000, imprisonment for not more than 3 years and six months, or both
Incompatibility Doctrine

Common law Prohibition.

The same person cannot hold two offices or an office and a position where one post is superior to the other or where, from a public policy perspective, it is improper for one person to discharge the duties of both posts.

If a second office is taken that is incompatible with an existing office, the first office is vacated.
Related Statutory Provisions

• The statutes generally prohibit governing body members from taking jobs in the municipality. Governing body members are prohibited, during the term for which the member is elected, from taking new municipal jobs created during their term of office even if they resign.
Misconduct in Office

• Section 946.12 is a criminal statute that prohibits public officers and employees from intentionally performing, or refusing to perform, certain acts.

• A violation of sec. 946.12 is punishable by up to two years in prison, a fine of up to $10,000, or both.
Bribery

• Section 946.10(2) prohibits public officials from taking bribes.

• Section 12.11 prohibits public officials from promising an official appointment or anything of value to secure votes.
Conclusion

• Remember the smell test.

• When in doubt, ask about potential conflicts.