



# Wisconsin County Highway Association



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### Ethics 101

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*...relationship focused*

# Misconduct in Public Office



- **Wis. Stat. § 946.12 states: “Any public officer or public employee who:**
  - Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer’s or employee’s office or employment within the time or in the manner required by law; or
  - In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or
  - Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or
  - In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or
  - Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law
- **is guilty of a class I felony”**

# Public Official Conflicts of Interest



- **Wis. Stat. § 946.13(1)(a) prohibits:**
  - Public officials or employees may not, in their private capacity, negotiate, bid for, or enter into a contract in which he has a private pecuniary interest, direct or indirect, if at the same time he is authorized or required by law to participate in his capacity as such officer or employee in making of that contract or to perform in regard to that contract, some official function requiring the exercise of discretion on his part.
- **Elements of § 946.13(1)(a):**
  1. Individual was a public officer or employee;
  2. The individual negotiated, bid for, or entered into a contract in a private capacity;
  3. The individual had a private pecuniary interest in the contract; and
  4. The individual was authorized or required by law to participate in the making of the contract in his capacity as a public officer or employee.

# Public Officials Conflicts of Interest



- **Wis. Stat. § 946.13(1)(b) prohibits:**
  - Public officers or employees from participating in the making of a contract in his capacity as an officer or employee, in which he has a private pecuniary interest, direct or indirect, or performs in regard to the contract, some function requiring the exercise of discretion.
- **Elements of § 946.13(1)(b):**
  1. Defendant was a public officer or employee;
  2. Defendant participated in the making of a contract in a capacity as a public officer or employee OR that the defendant, in his capacity as a public officer or employee, performed a function requiring the exercise of discretion in regard to a contract; and
  3. Defendant had a private pecuniary interest in the contract.

# Public Officials Conflicts of Interest



- **Examples of the statute's application:**
  - County board member who owns a business with which the county contracts for goods and services;
  - County board member sells land to the county, owned by a partnership in which the board member has an interest, for purchase price in excess of the statutory amount;
  - A village board member may not accept a community development block grant program loan in excess of the statutory sum or perform work for a third person who has obtained a loan under the program in excess of the statutory sum.

# Public Officials Conflicts of Interest



- **Exceptions to the statute:**

- Contracts in which any single public officer or employee does not receive more than \$15,000 a year from the state or political subdivision. Wis. Stat. § 946.13(2)(a).
- Contracts involving the deposit of public funds into public depositories. Wis. Stat. § 946.13(2)(b)
- Contracts involving loans under Section 67.12 (temporary borrowing or temporary promissory notes). Wis. Stat. § 946.13(2)(c).
- Contracts for publication of legal notices required to be published at a rate not higher than prescribed by law. Wis. Stat. § 946.13(2)(d).
- Issuance of tax titles, certificates or instruments secured by any tax fund for the payment of salary or other obligations due to the employee or officer. Wis. Stat. § 946.13(2)(e).
- Contracts for the sale of bonds or securities issued by the political subdivision provided the bonds/securities are sold to the highest bidder and the employee or officer has no duty to vote on their issuance. Wis. Stat. § 946.13(2)(f).
- Contracts with, or tax credits or payments received by a public officer or employee for wildlife damage claims or abatement. Wis. Stat. § 946.13(2)(g).

# Public Officials and Conflicts of Interest



- **Exceptions to the statute:**
  - Section 946.13(1)(b) does not apply to a public officer or employee by reason of his holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract. Wis. Stat. § 946.13(5).
  - Section 946.13(1) does not apply to public officers or employees receiving compensation for services of less than \$10,000 a year. Wis. Stat. § 946.13(7).

# Public Officials and Conflicts of Interest



- **Consequences**
  - A contract procured in violation of the conflicts of interest statute **IS VOID** and the state or political subdivision on whose behalf the contract was made incurs no liability thereon.
    - ✦ Wis. Stat. § 946.13(3).

# Public Officials and Conflicts of Interest



- **Avoiding liability**
  - According to the Attorney General, abstention from voting on or debating the contract or any matter relating to the contract and refraining from personally or by agent negotiating or entering into the contract in a private capacity or performing in regard to the contract some official function requiring the exercise of discretion insulates the official from liability.

# Public Officials and Conflicts of Interest



- **Avoiding liability**
  - HOWEVER, abstaining from voting does not avoid a violation of Section 946.13(1)(a) because a violation requires only the authority to act, not the actual action.
  - ALSO, performance of some official function requiring the exercise of an official's discretion with regard to the contract either **before or after** the execution violates Section 946.13.

# Public Officials and Conflicts of Interest



- **Proof of Liability**

- Notably, a violation of Wis. Stat. § 946.13 does not require proof of criminal intent.
- Section 946.13 is a strict liability statute.

# Ethics for Local Government Officials and Employees



Which entities are covered? – Wis. Stat. § 19.42(7u)

- Local Government Units which includes all cities, villages, towns, counties and special purpose districts (school districts).
- Instrumentalities or corporations of political subdivisions or special purpose districts.
- Combinations of subunits of political subdivisions or special purpose districts.
- Instrumentalities of the state and any of the foregoing.

# Ethics for Local Government Officials and Employees



- Persons who are covered – Wis. Stat. § 19.42(7w)
  - Local public officials:
    - ✦ Elective officers of local government;
    - ✦ County administrator or administrative coordinator;
    - ✦ Appointive office in which employee is appointed for a specific term;
    - ✦ Appointive office filled by the head of the local government;
    - ✦ The position of member of the board of directors of a local exposition district not serving for a specified term.

# Ethics for Local Government Officials and Employees



- Prohibited conduct is codified in Wis. Stat. § 19.59
  - Ban on use of public position to obtain financial gain or anything of substantial value for the benefit of:
    - ✦ The individual;
    - ✦ The individual's immediate family (defined as 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." Wis. Stat. s. 19.42(7)(b).
    - ✦ An organization with which the individual is associated.

# Ethics for Local Government Officials and Employees



- **Prohibited conduct:**
  - Exception for campaign contributions contributed and reported under Ch. 11.
  - Ban on offering or giving, directly or indirectly, anything of value to a local public official “if it could be reasonably expected to influence the local public official’s vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local official.”
  - Same prohibition on acceptance under such circumstances.

# Ethics for Local Government Officials and Employees



- **Prohibited conduct, con't.:**
  - Ban on taking “any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.”
  - Ban on “use of 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 official, one or more members of the official’s immediate family either separately or together, or an organization with which the official is associated.”

# Ethics for Local Government Officials and Employees



- **Prohibited conduct:**

- **HOWEVER**, the official may participate in the action “even though the action will affect the official or an organization with which the official is associated” as long as:
  - ✦ The official's action affects a whole class of similarly situated interests;
  - ✦ Neither the official's nor the business' or organization's interest is significant when compared to all affected interests in the class; and
  - ✦ The effect of the official's actions on the interests of the official or of the related business or organization is neither significantly greater nor less than upon other members of the class.

# Ethics for Local Government Officials and Employees



- State statutes do not prohibit a local official from taking action on salaries, benefits or reimbursements or from voting on a county or municipal ordinance.

# Enforcement of the Ethics Code for Local Government Officials and Employees



- **Intentional violations:**

- Penalty of not less than \$100 nor more than \$5000 or imprisonment of not more than one year in the county jail or both.
- Violation of Section 19.59(1)(br) (related to political contributions in exchange for official action) results in a Class I felony, punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months or both.

# Enforcement of the Ethics Code for Local Government Officials and Employees



- **Unintentional violations:**
  - Civil penalties may be imposed.
  - \$1000 for each violation.
- Other legal and equitable relief is also available such as mandamus, injunction and declaratory judgment.
- “Reasonable costs” may be awarded to the county or the state if the plaintiff prevails.

# Enforcement of the Ethics Code for Local Government Officials and Employees



- **Avoiding Liability through Advisory Opinions:**
  - Pursuant to Section 19.59(5)(a), an individual may request an advisory opinion.
  - Doing so insulates the official from liability under the Ethics Code.
  - Must be directed to either the local county or municipal ethics board if there is one.

# County Ethics Code



- Pursuant to Wis. Stat. § 19.59(1m)-(4), any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.
- Ordinance must specify to which positions it applies.
- Can apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies.

# County Ethics Code



- **May contain the following provisions:**
  - Identify any economic interests specified in Section 19.44;
  - Directing the clerk or board of elections commissioners to omit the name of any candidate who fails to make such economic disclosures from the election ballot;
  - Directing the county or municipal treasurer to withhold payment of salaries or expenses from any public official or employee who fails to disclose his or her economic interests in accordance with the ordinance requirements;

# County Ethics Code



- **May contain the following provisions:**
  - Vesting administration and civil enforcement of the ordinance with an ethics board appointed in the manner specified in the ordinance;
  - Prescribing ethical standards and prohibiting conflicts of interest on the part of public officials or employees or former public officials or former employees.
  - Prescribing forfeitures for each offense not to exceed \$1,000.

# Incompatibility of Offices



- Common Law doctrine independent of any statutory conflicts of interest.
- Two offices are incompatible if there are potential conflicts of interest between the duties of the offices or positions such as:
  - Salary negotiations;
  - Supervision and control of employee duties;
  - Discipline of employees;
  - An obligation to the public to exercise independent judgment.

# Incompatibility of Offices



- **General Tests:**

- If one of the offices is subordinate to the other in a significant way such as one office is subject to the disciplinary or removal power of the other.
- The character of the offices is determinative. In other words, the mere physical inability of the officer to perform the duties of both offices does not, itself, have any bearing on incompatibility.
- Where the existence of the second office precludes the continued existence of the first office, no incompatibility exists. *i.e.* school districts dissolved and combined.
- A situation involving two different persons in two different positions does not raise incompatibility issues, *i.e.* one spouse occupies a position and the other spouse assumes an apparently incompatible position or office (although it may raise conflicts of interest problems).

# Remedy for Incompatibility of Offices



- When an individual accepts an office that is incompatible with the one he or she presently holds, the consequences are severe.
- The individual vacates the first office by operation of law.

# Incompatibility of Offices



- **Offices found to be incompatible**
  - County supervisor and county employee
  - Alderperson and residential appraiser in assessor's office
  - County board member and county/city hospital board member
  - Town clerk and town treasurer
  - School board member and school district employee
  - Town board member and sanitary district commission member
  - Office of coroner and deputy coroner
- **Offices found to be compatible**
  - Office of county supervisor and assistant state public defender
  - Register of deeds and office of school board member
  - Office of county assessor and town supervisor
  - Village president and supervisory deputy sheriff
  - School board member and chairperson of town board

# Contact Information



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