

State of Wisconsin  
Ethics Commission

# UNDERSTANDING THE CODE OF ETHICS FOR LOCAL PUBLIC OFFICIALS

David Buerger  
*Staff Counsel*



## POLITICAL MARKET

### Conscientious Railroad President to

**Dealer:** "Ah! Let me see. I think I'll take this bunch of Legislators at \$5000 a head. The Senators, at - what price did you say?"

**Dealer:** "Can't afford 'em less than \$10,000 each."

**R.R.P.:** "Well, hand them over. I suppose I'll have to take the lot."

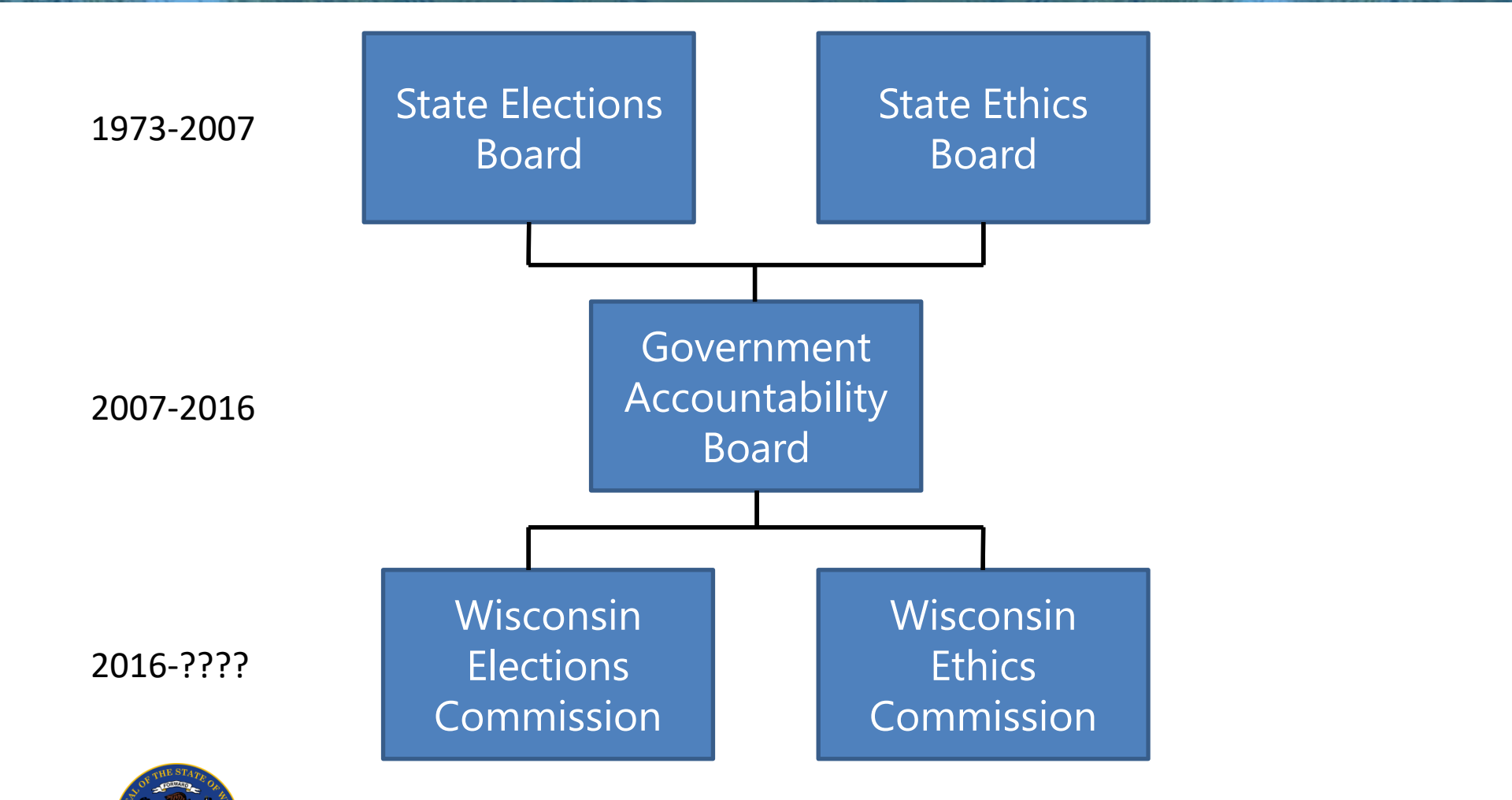
**Dealer:** "Anything else to-day? I have a lot of Editors, at various prices, from a Thousand down to Fifty Cents."

**R.R.P.:** "No, nothing in that way, to-day. But I want a Governor very much indeed, and will stand \$50,000 for him. Get me a Wisconsin one, if possible!"

Cartoon published in *Harper's Weekly* of June 12, 1858, at the time of the Land Grant Investigation



# THIRD TIME IS THE CHARM?

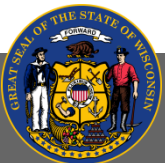


# State of Wisconsin Ethics Commission



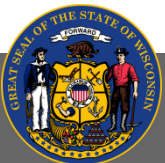
# ABOUT THE ETHICS COMMISSION

- Partisan Commissioners - [WIS. STAT. § 15.62](#)
  - 2 former judges, 4 others
  - 5-year terms
- Bipartisan Cooperation Required - [WIS. STAT. § 19.47\(4\)](#)
- Nonpartisan Staff - [WIS. STAT. § 19.47\(10\)](#)
  - Administrator
  - Staff Counsel
  - 6 other staff, 1 IT contractor
- Strict Confidentiality - WIS. STAT. §§ [19.46\(2\)](#), [19.50](#), [19.55](#)
  - Punishable by a \$10,000 fine or 9 months in jail, or both!



# RESPONSIBILITIES

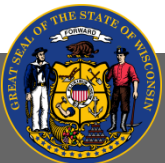
- Administer Wisconsin Statutes
  - Chapter 11: Campaign Finance
  - Subchapter III, Chapter 13: Lobbying
  - Subchapter III, Chapter 19: Code of Ethics
- Conduct programs to explain and interpret these laws.
- Compile and make the information provided to us available to the public!



# JURISDICTION

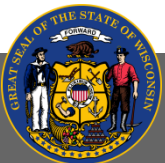
- Co-Equal Jurisdiction with District Attorneys, but historically...

Ethics Commission	District Attorneys
<ul style="list-style-type: none"><li>• Legislators, aides, service agencies</li><li>• Governor, Lt. Governor, appointees, secretaries, deputies, executive assistants, administrators</li><li>• Justices and judges</li><li>• Lobbyists and Lobbying Principals (organizations)</li><li>• Most campaign committees</li><li>• Any individual holding a state public office</li></ul>	<ul style="list-style-type: none"><li>• Code of Ethics for Local Officials</li><li>• Local candidate and local referendum committees</li></ul>



# IMPORTANT LAWS TO KNOW

- Code of Ethics
  - Use of Office for Financial Gain
  - Influence and Reward
  - Pay to Play
  - Conflicts of Interest
  - Discounts at Stadiums
  - Local Ethics Ordinances
- Other Laws
  - 50 Piece Rule
  - Special Privileges from Public Utilities
  - Private Interest in Public Contract
  - Common Law Duty of Undivided Loyalty





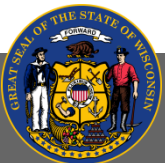


# CODE OF ETHICS



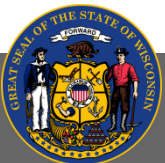
# DEFINITIONS

- Local public office - [WIS. STAT. § 19.42\(7w\)](#)
  - An elective office of a local governmental unit.
  - A county administrator or administrative coordinator or a city or village manager.
  - An appointive office or position of a local governmental unit in which an individual serves for a specified term.
  - An appointive office or position of a local government, which is filled by the governing body of the local government or the executive or administrative head of the local government **AND** in which the incumbent serves at the pleasure of the appointing authority.
  - An employee of a school district who holds a school administrator's license or permit and whose employment requires that license or permit.
  - An employee of a school district who acts as the head of facilities and maintenance and whose duties include making purchasing decisions.



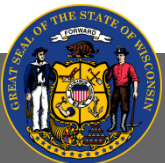
# DEFINITIONS, CONT.

- Local public office does **NOT** include:
  - Independent contractors
  - Persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers
  - Persons appointed for indefinite terms, who are removable for cause
  - Municipal judges (they are state public officials instead)
- A local ethics ordinance can be used to address any individuals not otherwise covered.



# DEFINITIONS, CONT.

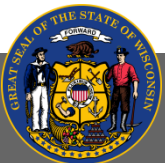
- Immediate family - [WIS. STAT. § 19.42\(7\)](#)
  - An individual's spouse
  - An individual's relative by marriage, lineal descent, or adoption who receives, directly or indirectly, more than 50% of his or her support from the official, or from whom the official receives more than 50% of his or her support
- Associated - [WIS. STAT. § 19.42\(2\)](#)
  - Director, officer, or trustee
  - Owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity
  - Authorized representative or agent





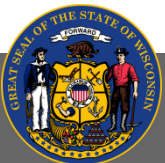
# DEFINITIONS, CONT.

- Organization - [Wis. STAT. § 19.42\(11\)](#)
  - Does not include bodies politic.
- Anything of value - [Wis. STAT. § 19.42\(1\)](#)
  - Any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment.
  - Does not include:
    - Compensation and expenses paid by the state
    - Political contributions reported under ch. 11.
    - Hospitality extended for a purpose unrelated to state business by a person other than an organization.



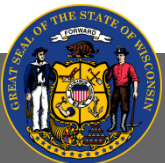
# USE OF OFFICE FOR FINANCIAL GAIN

- [Wis. STAT. § 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 himself or herself or his or her immediate family, or for an organization with which he or she is associated
- Participating in an official capacity in discussions, negotiations, or votes is a use of office. [1997 Wis Eth Bd 6](#), ¶ 7; [1996 Wis Eth Bd 13](#), ¶ 4.
- “Substantial value” is anything of more than token or inconsequential value. [2008 GAB 02](#), ¶ 4.
- The prohibition on a use of office to obtain something of value also includes a use of office to avoid a financial loss. [2003 Wis Eth Bd 17](#), ¶ 3; [2002 Wis Eth Bd 02](#), ¶ 9.



# EXCEPTIONS

- Exceptions:
  - May use title or prestige of office to obtain campaign contributions that are permitted and reported as required by ch. 11. [WIS. STAT. § 19.59\(1\)\(a\)](#).
  - Candidates/officeholders may solicit for donations to nonprofits they are associated with. [WIS. STAT. § 11.0206](#).
  - May obtain anything of value from WEDC or Department of Tourism that those agencies are empowered to provide. [WIS. STAT. § 19.59\(1\)\(a\)](#).





# EXAMPLE — PERSONAL BENEFIT

Thursday February 25, 1993

THE MILWAUKEE JOURNAL

## Ethics in government

# Official settles ethics flap by paying \$150

*Agriculture chief bought airline tickets through wife's travel agency*

By JAMES ROWEN  
of The Journal staff

State agriculture secretary Alan T. Tracy has paid a \$150 forfeiture to the Wisconsin Ethics Board after disclosing that his department paid \$1,493 to a travel agency owned by his wife for airline tickets that Tracy used.

Tracy, secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection, paid the forfeiture Tuesday in a settlement reached Monday with the ethics board.

The settlement came after The Milwaukee Journal earlier this month requested under the Wisconsin Open Records law information about department travel arranged through Uniglobe Profes-

sional Travel, according to Jonathan Becker, ethics board attorney.

Uniglobe, in the Madison suburb of Middleton, is operated and owned by Kris Tracy, Alan Tracy's wife, ethics board records show.

The forfeiture "was equal to the amount of the commission his wife had made" for writing the plane tickets, Becker said.

The ethics board settlement says that while the travel arrangements with Uniglobe did not impose any improper costs on the state, "Mr. Tracy, to avoid any claim of personal gain, has agreed to forfeit \$150."

State law forbids state officials from using their public positions "to obtain financial gain or any-



TRACY

thing of substantial value for the private benefit of himself or herself or his or her immediate family."

### TRACY 'VIOLATED THE LAW'

"I think it's fair to say that he violated the law," said R. Roth Judd, executive director of the ethics board, in an interview Wednesday night.

Judd said that he and Tracy had agreed that the ethics board would make the settlement public Thursday, allowing Tracy enough time to notify the department board in writing.

But Gov. Tommy G. Thompson defended Tracy when a reporter asked him about the forfeiture.

"He volunteered that," Thompson said. "He went to the ethics board because he recognized that there was some question. I think he should be complimented for coming forward and paying a forfeiture."

In paying the forfeiture, Alan Tracy is among several top state

agency officials whose recent actions have posed potential conflicts of interest or who have had ethical or personnel difficulties.

Alan Tracy booked the travel through Uniglobe "as a matter of convenience or economy ... with no thought of personal gain," according to the settlement agreement.

The trips booked through Uniglobe were for Alan Tracy to attend a conference in April 1992 in Louisiana and meetings in Washington, D.C., and Chicago in December 1991.

Tracy said The Journal's open records request triggered his concern about the potentially inappropriate appearance of the booking.

"I felt I should report them to the ethics board," he said in an interview Wednesday.

Tracy explained that he had instructed his secretary not to book travel through Uniglobe because he "did not want there to be a perception that I was traveling ... throw-

ing business to a family member."

But for reasons of personal convenience, he said, he twice directed his secretary to use Uniglobe and on one occasion booked a trip himself.

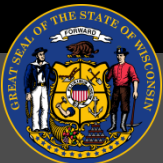
### TRACY SAYS HE WAS CARELESS

"In retrospect, that was careless, and I'm embarrassed by it," he said.

Travel agencies earn income through commissions on airplane tickets and other travel arrangements provided to customers.

Tracy booked about 30 trips between 1990 and 1992, only three of which he booked through Uniglobe, according to a Feb. 23 letter from the department to The Journal.

State agencies are encouraged to use, but are not required to patronize, four travel agencies that have been placed on an approved list through a competitive bidding procedure, according to the Wisconsin Department of Administration.

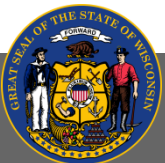


State of Wisconsin  
Ethics Commission

# NOT-SO HYPOTHETICAL

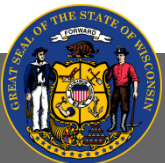
- A member of the city council is a retired city employee who participates in the city's health insurance benefits for retired employees.
- The city council votes on health insurance contracts with specific companies.
- The city's budget also includes a line item for health insurance funding.
- Can the member participate in official discussions and vote on the health insurance contracts?
- Can the member participate in official discussions and vote on the city budget?

[1996 Wis Eth Bd 10.](#)



# INFLUENCE AND REWARD

- [Wis. STAT. § 19.59\(1\)\(b\)](#)
  - No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be 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 public official.
  - Does not prohibit outside employment of local officials.
  - As a general rule officials should not accept anything of more than nominal value from organizations that have a special or specific interest in an item or matter likely to be before the official.



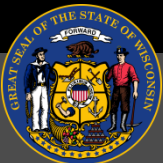


# BEWARE OF ANGELS



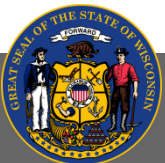
**Hark!** The herald "angels" sing:  
I will pay for everything!  
Dinners, drinks and parties wild  
Tell yourself you're undefiled!  
**Hark!** The herald angels sing:  
Ethics codes don't mean a thing  
**Hark!** The herald angels sing:  
I will pay for everything!

**ITEM:** REPORT DETAILS WIDESPREAD INFLUENCE IN LEGISLATURE BY LOBBYISTS, SOMETIMES REFERRED TO AS 'ANGELS.'



# NOT-SO HYPOTHETICAL

- A public agency is concerned about the level of the agency director's compensation and benefits.
- A non-profit foundation was formed solely to benefit the agency and has expressed an interest in providing the director with an annuity after the director leaves public service.
- May the director accept the annuity? [1999 Wis Eth Bd 05.](#)

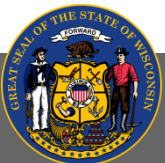




# DISPOSITION OF GIFTS

- If an official receives a gift that cannot be accepted, the official shall do one of the following:
  - Give the item to the office to use or sell.
    - May not sell the item to any government employee or official.
  - Give the item over to another public institution, such as a local school, library, or museum, that can use the item
  - Give the item to a charitable organization, not including one with which the official or his or her immediate family is associated
  - Return the item to the donor
  - If the donor is neither a lobbyist, nor a principal, purchase the item at its full retail value and keep the item
    - If the item's full retail value is unknown, recommend keeping any documentation supporting the amount paid.

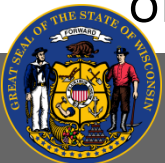
[Wis. STAT. § 19.59\(1b\).](#)





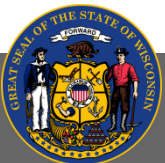
# PAY TO PLAY PROHIBITED

- [Wis. STAT. § 19.59\(1\)\(br\)](#)
  - No local public official or candidate for local public office may give or withhold, or offer or promise to give or withhold, his or her vote or influence...
  - No local public official or candidate for local public office may promise to take or refrain from taking official action with respect to any proposed or pending matter...
  - ...in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified local public official or candidate for local public office.



# CONFLICTS OF INTEREST

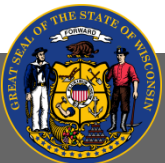
- [Wis. STAT. § 19.59\(1\)\(c\)](#): No local public official may:
  - Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest
  - Use his or 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
    - Similar to the prohibition of [Wis. STAT. § 19.59\(1\)\(a\)](#). However, substantial benefit is likely broader than financial gain or substantial value.



# OFFICIAL MAY ACT IF...

- The official action affects a whole class of similarly-situated interests; and,
- Neither the interests of the official, a member of the official's immediate family, nor 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 their immediate family, or of an associated business or organization is neither significantly greater nor less than upon other members of the class

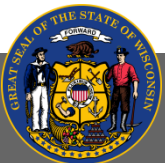
[Ethics Commission Guideline 1232](#)





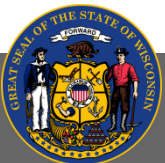
# OFFICIAL MAY ACT IF...

- The official action is concerning: (1) the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or (2) the modification of a county or municipal ordinance. [Wis. STAT. § 19.59\(1\)\(d\)](#).
- The impact on the official's interests is remote or speculative. See [Wis. STAT. § 19.45\(1\)](#); [2020-ETH-05](#).



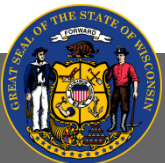
# HOW TO RECUSE

- When a matter in which a public official should not participate comes before the body, the official should:
  1. Note that they will be recusing themselves from this item, and
  2. Ask that the body's minutes reflect that the member has withdrawn.
- The official should then refrain from participating in discussions, deliberations, or votes related to that matter.
- See [1992 Wis Eth Bd 22](#).



# NOT-SO HYPOTHETICAL

- A local company has petitioned to rezone a parcel from residential to commercial.
  - Village Trustee 1 resides in a home near the parcel and is an employee of the company.
  - Village Trustee 2 is an employee of a company that supplies products to the company seeking rezoning.
  - Village Trustee 3 owns a business that used to do work for the company seeking the rezoning and bids yearly for a contract with the company.
- Who should recuse?



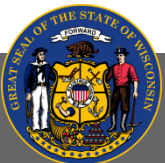


# DISCOUNTS AT CERTAIN STADIUMS

- No person serving in a local office may accept any discount on the price of admission or parking charged to members of the general public, including any discount on the use of a sky box or private luxury box, at a stadium that is exempt from general property taxes.

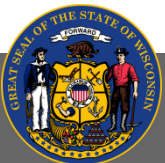


[WIS. STAT. § 19.451](#)



# LOCAL ETHICS ORDINANCES

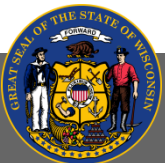
- Any county, city, village, or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county and municipal elective offices.
  - Shall specify the positions to which it applies.
  - May apply to members of the immediate family of officials/employees.
- Ordinance may include a requirement to file a statement of economic interests
  - May omit candidates from the ballot who do not comply
  - May withhold payments to officials/employees who do not comply





# LOCAL ETHICS ORDINANCES, CONT.

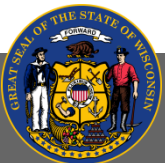
- May create a local board of ethics to administer/enforce the ordinance. The ordinance may provide that the board may:
  - Issue subpoenas, administer oaths, and investigate any violation of the ordinance on its own motion or upon complaint by any person.
  - Issue advisory opinions upon request.
  - Withhold in whole or in part any records of the board's opinions, opinion requests, and investigations of violations.
- Forfeitures of up to \$1,000 per violation.





# ADVISORY OPINIONS

- Any individual may request an advisory opinion from a local ethics board, or, in the absence of such a board, the corporation counsel or municipal attorney.
- Requests and advisory opinions must be in writing.
- Making a request and abiding by the guidance provided is prima facie evidence of intent to comply with [WIS. STAT. § 19.59](#) or any local ethics ordinance. [WIS. STAT. § 19.59\(5\)](#).
- Any county corporation counsel or attorney for a local governmental unit may request their own advisory opinion of the Commission concerning the interpretation of [WIS. STAT. § 19.59](#).



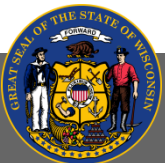


# OTHER LAWS



# 50-PIECE RULE

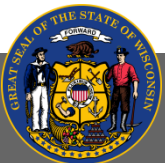
- [Wis. STAT. § 11.1205](#): Use of government materials by candidates
  - No person elected to state or local office
  - Who becomes a candidate for national, state, or local office
  - May use public funds for the cost of materials or distribution for 50 or more pieces of substantially identical materials distributed after the first day to begin circulating nomination papers
- Except...
  - Answers to communications of constituents
  - Actions taken by a local administrative officer pursuant to a specific law, ordinance, or resolution which authorizes or directs action to be taken





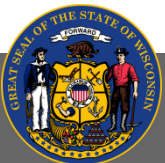
# 50-PIECE RULE GUIDANCE

- The Ethics Commission has provided further guidance on the 50-Piece Rule:
  - [Guideline ETH-1251](#)
  - [2018 ETH 03](#) (Application of 50-Piece Rule to Agency Materials)
    - Passive communication = 1 piece per publication
    - Active communication = 1 piece per recipient
  - [2020 ETH 01](#) (50-Piece Rule and Mixed-Use Social Media Accounts)
    - Requests to share a communication count against original sender
    - No newspaper ads or newsletters (direct mail or e-update) with public funds during campaign period in excess of 49 pieces
    - Radio ads permissible if no more than 49 spots
    - Paid promotion of social media only up to 49 people



# 50-PIECE RULE GUIDANCE, CONT.

- [2020 ETH 03](#) (Application of 50-Piece Rule to Communications with Petition Signatories and Newspaper Advertisements)
  - Responses to petition signatories are essentially answers to communications of constituents and are permitted
  - Newspaper ads are counted as one piece per newspaper that is published



# 50-PIECE RULE VIOLATION

## Wisconsin Ethics Commission: Mayor Mielke's campaign message in newsletter violated law



**Benita Mathew**

Daily Herald

Published 10:35 a.m. CT Feb. 29, 2020

WAUSAU - The Wisconsin Ethics Commission found probable cause that Mayor Robert Mielke violated a campaign ethics rule when he sent a campaign message in the city's winter newsletter.

In a statement released Friday, Mielke said including the message was an "honest mistake" and agreed to pay the \$100 fine.

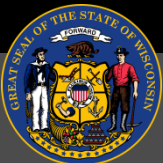
Wausau mayoral candidate Katie Rosenberg filed the complaint with the commission. She claimed it was too similar to his campaign announcement speech.

**RELATED:** Wausau mayoral candidate Rosenberg wants to rethink new water plant, as Mayor Mielke bristles

The commission determined Mielke violated the "50-piece rule," which says candidates are not allowed to release 50 or more pieces of identical material using public funds during their candidacy.

Mielke took responsibility for including the message in the newsletter and apologized in his statement.

"Creating a message for our newsletter or any other correspondence related to the city's business is part of my duties. But, I should have been more mindful of the election season. Going forward, during the rest of the election season, I will assign a staff member to write any further messages or correspondence to avoid any further issues," Mielke said in the statement.

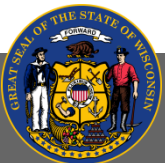


State of Wisconsin  
Ethics Commission



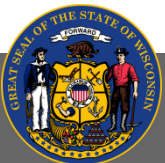
# PRIVILEGES FROM PUBLIC UTILITIES

- [WIS. STAT. § 946.11](#)
  - Any public officer who asks for or accepts from any person, or uses in any manner or for any purpose, any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property, or for the transmission of any message or communication, is guilty of a Class I felony.
  - Do not accept free or discounted transportation, traveling accommodation, or communication services for which the supplier would normally charge.



# INTEREST IN PUBLIC CONTRACT

- [WIS. STAT. § 946.13](#)
  - Any public official or public employee who does any of the following is guilty of a Class I felony:
    - In the officer's or employee's private capacity, negotiates or bids for, or enters into a contract in which the officer or employee has a private pecuniary interest, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract, or to perform in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part; or
    - In the officer or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.



# EXAMPLE — INTEREST IN PUBLIC CONTRACT

## **3 officials face conflict charges**

**KENOSHA (AP) —** Three administrators at the Gateway Technical Institute who had been the targets of an investigation last month were charged Friday with felony counts of having a private interest in public contracts.

Special Prosecutor Frederick Zievers filed the charges in Kenosha County Circuit Court against Gateway Director Keith Stoehr, Deputy Director Rolland Graf and Kenneth Mills, instructional services director.

Stoehr, whose contract with the school ends June 30, 1984, was charged with four counts of having a private interest in public contracts in connection with the administration of consulting contracts involving the school's foreign projects. Graf and Mills each face two counts of the same charge.

Initial court appearances for the three were scheduled for Wednesday.





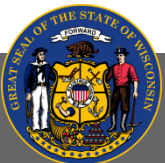
# DUTY OF UNDIVIDED LOYALTY

- A local official owes the public a common law duty of undivided loyalty. [2020 ETH 05](#).



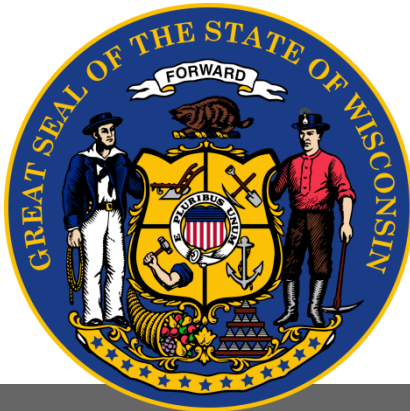
As an expert, Fido will explain the Duty of Loyalty.

- Advise that a local official proceed with caution where this duty may be implicated.



# WHERE TO FIND MORE INFORMATION

- **Wisconsin Statutes**
  - <https://docs.legis.wisconsin.gov>
- **Advisory Opinions**
  - Prompt, Confidential, Authoritative
- **Guidelines**
  - <https://ethics.wi.gov>



Ethics@wi.gov  
<https://ethics.wi.gov>  
Phone: (608) 266-8123  
Fax: (608) 264-9319

State of Wisconsin  
Ethics Commission