

Legal and Ethical Standards Related to Attendance at the State Education Convention

Many school districts will be sending administrators and school board members to Milwaukee to attend the annual WASB/WASDA/WASBO State Education Convention (Convention) in January. Administrators and board members are obligated to comply with the legal and ethical standards established for local public officials that affect their participation in Convention-related events. This Legal Comment will discuss the Open Meetings Law and the Code of Ethics for Local Public Officials as these laws relate to and govern the actions of administrators and board members while in attendance at the Convention.¹

Open Meetings Law

Convention participants whose districts send more than one board member to the Convention should consider how Wisconsin's Open Meetings Law may impact their ability to participate in Convention-related activities.² The Wisconsin Attorney General has issued a number of opinions that offer Open Meetings Law guidance to board members with regard to their attendance at conferences, workshops, seminars, and conventions, including, but not limited to, the Convention.

The fundamental purpose of the Open Meetings Law is to ensure that the public has access to full and complete information regarding governmental affairs.³ In order to advance this purpose, meetings of state and local governmental bodies, including school boards, must be held in locations reasonably accessible to members of the public and must be open to all citizens at all times unless otherwise expressly provided by law.⁴ The Wisconsin Supreme Court has held that a "meeting" of a governmental body, including a school board, occurs whenever: (1) there is a purpose to engage in governmental business, and (2) the number of members present is sufficient

to determine the governmental body's course of action (quorum, including a walking quorum or negative quorum).⁵

The Wisconsin Attorney General was asked to issue an opinion as to whether the social nature of many activities offered at the Convention makes attendance at the Convention outside the scope of the Open Meetings Law.⁶ It is well-established that a "social or chance encounter" of members of a governmental body is not a meeting of the body requiring public notice and accessibility pursuant to the Open Meetings Law.⁷ Any presumption that the members are present to engage in governmental business is rebutted when members meet in a social setting or by chance. However, according to the Attorney General, the attendance of board members and administrators at a conference, convention, or seminar, does not constitute a chance encounter because such attendance is pre-planned. Moreover, such attendance is not a purely social gathering because such conferences, conventions, and seminars are designed for board members to discuss issues related to the responsibilities, authority, power, or duties delegated to or vested in the board.

Nevertheless, the Attorney General also concluded that attendance at the Convention did not necessarily constitute a "meeting" of the board. According to the Attorney General, discussions at the Convention generally involve concerns common to all school districts, rather than discussions about a particular district's business. As such, even if the number of board members present is sufficient to determine the board's course of action, the purpose of the gathering is not to engage in the business of the particular district, but rather to take advantage of the Convention-related activities. Therefore, the Attorney General has concluded that attendance of a quorum of a board at the Convention, by itself, does not result in a "meeting" of a governmental body, as defined in the Open Meetings Law.

The Attorney General warned, however, that when a quorum of a board or any committee or subunit of a board is present during the Convention and all related activities, including the ride to and from the Convention, board members must not discuss business specifically related to the district.⁸ Moreover, board members should not formally attempt to convene during any of the Convention-related activities.

In order to avoid the perception that a board is violating the Open Meetings Law, many districts post a notice, in accordance with board policy, that communicates to the community that a certain number of board members and/or other district officials will be attending the Convention. This type of notice should explicitly state that the board will not convene nor conduct any board business during the trip or at the Convention.

The Code of Ethics for Local Public Officials

Regardless of the number of board members and/or administrators in attendance at the Convention to represent the district's interests, the Code of Ethics for Local Public Officials should be considered in order to determine how this law may restrict the activities and events in which the board members and/or administrators participate during the trip.⁹

The Code of Ethics for Local Public Officials prohibits district officials (board members, district administrators, business managers, etc.) from accepting: (a) items or services of substantial value for private benefit, or for the benefit of the official's immediate family or associated organizations, if offered because of one's public position; (b) anything of value that could reasonably be expected to influence the official's vote, official action(s) or judgment; and/or (c) anything of value that could reasonably be considered a reward for official action(s). The Code of Ethics for Local Public Officials is enforced by the Wisconsin Ethics Commission.

The Wisconsin Ethics Commission provided guidance that suggests an official may attend conventions and participate in convention-related activities, by and large, without violating the Code of Ethics. While attending a convention authorized by and on behalf of a district, officials may accept meals, refreshments, and the like without charge if the local government would otherwise bear the official's expense.¹⁰ In common and union high school districts, this position is strengthened when the electors at an annual or special meeting of the electors have authorized the payment of expenses of school board members when traveling in the performance of their duties, or when a unified school board authorizes such payment through board policy.¹¹ When a board authorizes the attendance of its officials at the Convention, it is fair to presume that their attendance is in furtherance of a public purpose or benefit and that the board contemplates that they will partake fully in all the Convention has to offer, including forums and receptions that are sponsored by the event organizer. Given this analysis, as long as the board has authorized attendance at the Convention, those officials in attendance are generally not required to pay the cost of meals, refreshments and the like offered during the Convention by its organizers, i.e., the Wisconsin Association of School Boards, the Wisconsin Association of School District Administrators, and/or the Wisconsin Association of School Business Officials, in order to comply with the Code of Ethics

However, during the Convention, officials must be cautious about accepting food, drinks and/or entertainment, without charge or at less than fair value, that are offered at social events sponsored by entities or organizations other than the event organizers when the entities or organizations may be current or prospective district vendors. According to the Wisconsin Ethics Commission, beer, wine, liquor, meals, buffets, and the like have more than token value, and a purely social event, such as a hospitality suite, a happy hour, or a dinner, provides a primary

benefit to the official, rather than to the district that authorized his or her attendance. District officials responsible for making or approving purchasing decisions for the district should not accept food, drinks and/or entertainment, without charge or at less than fair value, from current or prospective vendors because receipt of such items of value could serve as the basis for an allegation that the items influenced the officials' decisions regarding the purchase of goods or services from the vendor.

Thus, a district official is advised to avoid attending an event that is purely social, sponsored by a current or prospective vendor of the district, and provided to the official without charge or at less than fair value. This is true even if the event is identified in the Convention program or in the Convention materials. That said, the district official may attend such an event and avoid a Code of Ethics violation by paying the vendor the full cost of the meal, refreshments and entertainment offered at the event.

District officials may accept at the Convention educational or informational materials, prizes or other giveaway items for the purpose of conveying the item to the district for the use or benefit of the district. However, if the district official wishes to keep the item for himself or herself, the item must be of token or inconsequential value, in contrast to an item of merchantable value, in order to remain compliant with the Code of Ethics. The statute does not establish a specific dollar value as a "merchantable" value. The determination of whether an item has more than token or inconsequential value is left to the official's discretion. That said, the Wisconsin Ethics Commission has opined that some tote bags, caps, t-shirts, mugs, pens, rulers, refrigerator magnets, and key chains containing a company logo are likely to be of inconsequential value; while other items, including jackets and watches, are likely to have more than inconsequential value, i.e., merchantable value.¹²

Finally, board policies may address the issue of the receipt of gifts by district officials. Accordingly, before an official accepts a prize or other giveaway item from a current or prospective vendor of the district exhibiting at the Convention, it is important for the official to review and apply the board's policies on the subject to determine whether he or she may keep the item.

Conclusion

The Convention offers the opportunity for administrators and board members to obtain new information about the latest products, services, and developments in education. However, in doing so, it is important for them to be aware of the rules and requirements of the Open Meetings Law, as well as to understand and recognize how the Code of Ethics for Local Public Officials regulates when they may accept food, drink, or other items of value, without charge or at less than fair value, and when such acceptance will be problematic. Moreover, under no circumstances should receipt of any such items influence the decisions of the district officials. Finally, it is also important for administrators and board members to review board policies for additional, more restrictive rules about Convention attendance and participation, and to direct any additional questions or concerns to the district's legal counsel.

ENDNOTES

- * This *Legal Comment* was written by Michael J. Julka, Steven C. Zach, and Brian P. Goodman of Boardman & Clark LLP, WASB Legal Counsel.
- 1. For additional information on related topics, *see* Wisconsin School News: "The Government Accountability Board" (March 2008); "Compliance with Wisconsin's Open Meetings Law, Part I" (September 2004); "Compliance with Wisconsin's Open Meetings Law, Part II" (October 2004); "Board Duties and Obligations and Potential Ramifications for Non-Compliance" (April 2016); "Recurring Issues for School Board Members: School Board Member Conflicts of Interest, Ethics, and Incompatibility of Offices" (May 2013).
- 2. Wis. Stat. sec. 19.81 et seq.

3. Wis. Stat. sec. 19.81(1).
4. *See, e.g.*, Office of the Attorney General, Informal Opinion to Clifford Miller (May 25, 1977).
5. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154 (1987).
6. Office of the Attorney General, Informal Opinion to Donald MacTaggart (May 25, 1977).
7. Wis. Stat. sec. 19.82(2); *see also Wisconsin School News: "Meeting or Chance Encounter? The Wisconsin Supreme Court Interprets the Open Meetings Law"* (September 1993).
8. Office of the Attorney General, Informal Opinion to Beatrice Weiss (January 20, 1981); *see also State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, 376 Wis. 2d 239, 898 N.W.2d 35 (defining "committee" for purposes of the Open Meetings Law).
9. Wis. Stat. sec. 19.59 et seq.
10. 1992 Wis. Eth. Bd. 9 (March 24, 1992), wherein the Ethics Board concluded that a local public official may attend a breakfast meeting sponsored by a private entity at a convention if the local governmental unit has authorized the official's attendance and would otherwise pay the cost.
11. Wis. Stat. secs. 120.10(4); 120.44(2).
12. *See* 2006 Wis. Eth. Bd. 4 (2006), wherein the Ethics Board concluded that gifts of token or inconsequential value, in contrast to an item of merchantable value, do not constitute use of an office to obtain something of substantial value for private benefit.