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**VIA E-Mail: [ethics@wi.gov](mailto:ethics@wi.gov)**

Wisconsin Ethics Commission  
PO Box 7125  
Madison, WI 53707-7125

Proposed Guidance Document  
Ethics Guideline ETH-1211

Members of the Commission:

On behalf of the Association of Wisconsin Lobbyists, we urge the Commission to reject proposed ETH-1211 in its current form. The guidance improperly relies on an Attorney General opinion and a Wisconsin Ethics Board advisory opinion interpreting and applying a portion of the Wisconsin Lobbying Law (“lobbying law”) that was since amended.<sup>1</sup> Because the Attorney General opined on a term that was struck from the statute, the rationale for revised guidance in ETH-1211 lacks any legal basis.

In practice, revised guidance in proposed ETH-1211 would prevent lobbying principals from hosting grassroots advocacy day receptions for the purpose of facilitating interaction between public officials and individual constituents. Although the guidance does not expressly ban receptions sponsored by the lobbying principals, this is the practical result. Proposed ETH-1211 does the following:

- Prohibits a lobbying principal from requiring a covered public official or legislative employee<sup>2</sup> to pay for food and refreshments at a private grassroots advocacy day reception;
- Because a lobbying principal cannot seek reimbursement, requires a lobbying principal to open a grassroots advocacy day reception to the general public if covered public officials and legislative employees will have access to food and refreshments;

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<sup>1</sup> 80 Op. Att’y Gen. 205; 1997 Wis. Eth Bd 12.

<sup>2</sup> Covered officials under the lobbying law are elective state officials, candidates for elective office and agency officials. Although the proposed guidance refers to public officials, the lobbying law restrictions on accepting things of pecuniary value also apply to legislative employees. See Wis. Stat. § 13.625(1)(b).

- Allows a lobbying principal to establish criteria for segments of the public that may attend, but prohibits a lobbying principal from including public officials and legislative employees in that criteria; and,
- Prohibits a lobbying principal from directly inviting covered public officials and legislative employees to a grassroots advocacy day reception that is open to the public.

The Commission should reject proposed ETH-1211 since it relies on the interpretation of a statute that no longer exists and establishes guidelines for compliance that are entirely unworkable. If the Commission chooses to proceed with this guidance, it should begin the rule promulgation process as required by Wis. Stat. §§ 227.01(13) and 227.10(1).

### **GRASSROOTS ADVOCACY DAY RECEPTIONS**

For nearly 30 years, lobbying principals – including trade associations, labor unions and other advocacy groups – have hosted grassroots advocacy days that include a formal program with panel discussions and presentations, scheduled office visits with legislators and, at the end of the day, a reception where drinks and hors d'oeuvres are traditionally served. Lobbying principal employees, grassroots advocacy day participants, legislators and other public officials, and agency and legislative staff are typically invited to attend the reception.

These types of receptions take place in states across the nation and in Washington, D.C. because meeting with constituents and constituent organizations is a basic duty of state and federal representatives. In fact, Wisconsin's code of ethics for state officials encourages exactly these types of interactions.

Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or judicial branch.<sup>3</sup>

The lobbying law likewise recognizes the essential role of advocacy in representative government.

The legislature declares that the operation of an open and responsible government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues.<sup>4</sup>

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<sup>3</sup> Wis. Stat. § 19.56(1).

<sup>4</sup> Wis. Stat. § 13.61.

Nearly all grassroots advocacy day receptions are hosted by lobbying principals since their representation of specific community and advocacy groups, professions, trades, industries, employers or employees allows them to organize large groups of constituents interested in meeting their government representatives. With the exception of some local chambers of commerce, other organizations do not share this mission with lobbying principals. As a result, while the revised guidance impacts “only” lobbying principals, they are the only groups – with minor exceptions – hosting these types of receptions.

### **RELEVANT REVISIONS TO EXISTING GUIDANCE IN ETH-1211**

Guidance adopted by the Wisconsin Ethics Board, affirmed by the Government Accountability Board in 2008 and currently posted to the Commission’s website advises that a public official may purchase from a lobbying principal “food and drink that the official purchases at an event intended for and conducive to the discussion of state governmental processes, proposals, and issues.”<sup>5</sup> Accordingly, the longstanding practice of lobbying principals is to charge public officials and legislative staff who attend their grassroots advocacy day receptions. This guidance is deleted from proposed ETH-1211 and with it, the ability of a lobbying principal to host a reception at which a covered public official or legislative employee pays to consume food or refreshments.

Under revised ETH-1211, a lobbying principal may provide food and refreshments to covered public officials and legislative employees who attend a reception only if the event is open to the public. Specifically, the food and refreshments must be provided to the general public on the same terms. But under this proposed guidance, a covered public official or legislative employee cannot be directly invited to attend the event.

### **ETH-1211 APPLIES PRE-2015 STATUTES**

Proposed ETH-1211 is based on a 1992 Attorney General opinion that interpreted a provision of the lobbying law later amended in 2015.<sup>6</sup> The Attorney General concluded that the statutory prohibition on a lobbying principal “furnishing” items of pecuniary value, including food and beverages, to covered public officials and legislative employees included selling items to them.<sup>7</sup> The lobbying law was amended in 2015 to eliminate the word “furnish” from the prohibition. Currently, the statute interpreted by the Attorney General provides that a lobbying principal may not “give” things of pecuniary value to a covered official or legislative employee.<sup>8</sup>

The lobbying law also places reciprocal limitations on covered officials and legislative employees; it provides that they may not “solicit or *accept* anything of pecuniary value” from a

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<sup>5</sup> ETH-1211 (Rev. 10/16).

<sup>6</sup> 2015 Wisconsin Act 117.

<sup>7</sup> 80 Op. Att’y Gen. 205 (1992).

<sup>8</sup> Wis. Stat. § 13.625(2).

lobbying principal.<sup>9</sup> (Emphasis added.) The code of ethics for state officials similarly provides that no state public official “may *accept* or retain any transportation, lodging, meals, food or beverages, or reimbursement” except as provided in Chapter 19 of the Wisconsin Statutes.<sup>10</sup> (Emphasis added.) According to a separate 1992 Attorney General opinion, “accept” as used in the code of ethics was intended to apply only to receiving gifts.<sup>11</sup> A gift means “the payment or receipt of anything of value without valuable consideration.” In other words, a state public official has accepted something of value in violation of the ethics code only when he or she does not pay for it.

The Attorney General said that “accept” had a different meaning in the 1992 lobbying law specifically because “the concomitant prohibition...is a prohibition against ‘furnishing,’ a term that includes both giving and selling.”<sup>12</sup> When the legislature struck “furnishing” from the lobbying law prohibition on providing things of pecuniary value in 2015, it established a uniform meaning of “accept” under the code of ethics for state officials and the lobbying law. As a result, a covered public official or legislative employee has accepted something of pecuniary value from a lobbying principal in violation of the lobbying law only when he or she does not pay for it. Accordingly, the reasoning and conclusions of the Attorney General related to “furnishing” items of pecuniary value are inapplicable to the existing statutes and provide no legal basis for the revised guidance in ETH-1211.

#### **PRACTICAL EFFECT OF ETH-1211**

Under revised ETH-1211, a lobbying principal may provide food and refreshments to public officials and legislative employees who attend a reception only if the event is open to the public. According to the proposed guidance, a lobbying principal has provided these items to the general public and public officials and legislative employees on the same terms when:

- They are available to anyone who wants it and who meets the criteria for eligibility;
- The criteria are:
  - Established and readily identifiable; and
  - Drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency officials legislative employee, or elective state official; and,

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<sup>9</sup> Wis. Stat. § 13.625(3).

<sup>10</sup> Wis. Stat. § 19.45(3m).

<sup>11</sup> 80 Op. Att’y Gen. 201 (1992).

<sup>12</sup> Id.

- There is no offer or notice of the event, item or service direct to an official that would confer an advantage to the official.

In practice, this proposed guidance means lobbying principals must provide free food and refreshments to public officials and legislative employees, rather than requiring payment as they have for 30 years. Although absurd, this is the only logical result since a host typically will not charge its own employees and members to attend the reception.

Even more absurd are guidelines that do not allow a grassroots advocacy day reception to achieve its intended purpose of facilitating discussions between public officials and their constituents. Revised ETH-1211 does not allow the host of a “public” grassroots advocacy day reception to invite public officials or legislative employees for two reasons. First, any criteria for attendance that includes public officials and legislative employees improperly provides “a preference” to them. Second, since the lobbying principal may not provide notice of the event to the covered public official that “confers an advantage,” it may not email or mail invitations to covered public officials or legislative employees since it would not be possible to email or mail invitations to every other person who fits the public criteria.

## CONCLUSION

Even if one draws the conclusion that the pre-2015 lobbying law prevented a covered public official or legislative employee from paying a lobbying principal for food and drink consumed at a reception, current state law does not. The prohibition on accepting items of pecuniary value from a lobbying principal applies only when those items are provided free of charge. Reimbursement of a lobbying principal is not prohibited under state law. Since the existing guidance allows covered public officials and legislative employees to pay for food and drink consumed at a private grassroots advocacy day reception, the proposed revisions are unnecessary and should be rejected.

If the Commission does go forward with the revised guidance, it should begin the rule promulgation process since it intends to interpret the statutory requirement of making items available to general public and apply that interpretation to all persons who must comply with the lobbying law.

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