

# CITY OF RIVER FALLS

## OPEN MEETINGS/ETHICS LAW FOR COMMON COUNCIL MEMBERS

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*These materials should serve as a guide and do not purport to cover every requirement of these laws. These materials should not be construed as legal advice or legal opinion on any specific facts or circumstances. These materials are intended for general informational purposes only, and you are urged to consult with legal counsel concerning specific situations and any legal questions you may have.*

## I. CITY COUNCIL ORGANIZATION AND PROCEDURES

### A. Powers and Duties

The alderpersons and mayor shall constitute the city council and shall have such power and duties as are enumerated in Ch. 62, Wis. Stats., and elsewhere in the statutes. (Municipal Code 2.04.010). See also, Wis. Stat. § 62.11(1).

### B. Authority

The city council shall have all powers of the city not specifically given to some other body or officer. Except as otherwise provided by law, the city council shall have the management and control of the city property, finances, highways, streets, utilities and the public service, and may act for the government and good order of the city, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, imposition of forfeiture and other necessary or convenient means. The city council may appoint such officers from time to time as may be deemed necessary for the benefit of the community. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language. (Municipal Code 2.04.020). See also, Wis. Stat. § 62.11(5).

### C. Alderpersons

There shall be seven alderpersons elected to the city council, one member from each of the four aldermanic districts and three members elected at large. (Municipal Code 2.04.030 A). See also, Wis. Stat. § 62.11(5).

### D. Meetings

1. **Regular Meetings.** Regular meetings of the city council shall be held on the second and fourth Tuesday of each calendar month at six thirty p.m. in the Council Chambers of the City Hall. Any regular meeting falling upon a holiday shall be held on the next following day at the same time and place unless changed by the city council at the regular meeting preceding the holiday and provided that notice of the meeting change shall be published in the official newspaper at least one week prior to such rescheduled meeting. (Municipal Code 2.04.040 A).
2. **Special Meetings.** Special meetings of the council may be called by the mayor or by any two alderpersons by filing a written request with the city clerk. (Municipal Code 2.04.040 B).

3. Adjournments. The council may, by a majority vote of those present, but not less than three affirmative votes, adjourn from time to time to a specific date and hour. (Municipal Code 2.04.040 C).

E. Quorum

Four members of the council shall constitute a quorum for the transaction of business. The mayor shall not be counted in determining whether a quorum is present at the meeting, but may vote in case of a tie. (Municipal Code 2.04.060 B). If there is not a quorum present, the facts shall be entered on the journal and the council may adjourn... (Municipal Code 2.04.060 A). Note: this quorum provision differs from the requirement in Wis. Stat. § 62.11(3)(b), pursuant to Charter Ordinance, dated March 10, 1992.

F. Open Meetings

All city council meetings shall be open to the public. Wis. Stat. § 62.11(3)(c). The council shall in all other respects, determine the rules of its procedure. Wis. Stat. § 62.11(3)(e).

## II. **WISCONSIN OPEN MEETING LAW**

A. Policy and Construction of the Open Meeting Law

1. Policy

"...it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business."

"... all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law." Wis. Stat. § 19.81(2).

2. Construction

The law shall be liberally construed to give effect to above-quoted policy of openness. Wis. Stat. § 19.81(4).

B. Definitions

1. Governmental Body

"...state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rules or order; a governmental or quasi-governmental corporation;... or a formally constituted subunit of any of the foregoing..." Wis. Stat. § 19.82(1).

2. Meeting

"Wis. Stat. § 19.82(2). 'Meeting' means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.

If one-half or more of the members of a governmental body are present, the meeting is presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter..."

3. Formally Constituted Subunits

a. Committees.

b. No specific requirements that elected board members be part of a subunit of the governmental body. Examples:

(1) Ad hoc citizens committees.

(2) Building committees to evaluate sites.

c. The proper standard for a determination of the applicability of the open meeting law is the question of how the entity was formed, i.e., is it a subunit of a governmental body?

d. A governmental body generally does not include a group of administrative staff of a governmental entity.

C. Notice Requirements

1. Wis. Stat. § 19.84(1) requires that all meetings be noticed.

2. Contents of the Notice
  - a. Time
  - b. Place
  - c. Date
  - d. Subject Matter - Agenda
  - e. Matters intended for consideration at a closed session
3. Timeliness of Notice
  - a. General rule -- 24 hours advance notice
  - b. Emergency -- 2 hours advance notice
4. Who is to Receive Notice
  - a. Public,
  - b. News media who file written requests, and
  - c. Official newspaper (or if none exists, to a news medium likely to give notice in the area)
5. Methods for Providing Official Notice
  - a. To the public: posting is an acceptable method of providing notice to the public (OAG 26-77). It is acceptable to post notices of governmental bodies in one or more places likely to be noticed by the public (OAG 86-76).
  - b. News media may be notified either in writing or by telephone (OAG 86-76); it is highly preferable to use written notification so that any misunderstanding might be avoided.
  - c. There is no requirement for paid legal notice unless other statutes require it.

D. Meeting Notices: How Much Detail Is Required?

1. In State ex rel Buswell v. Tomah Area School District, the Wisconsin Supreme Court addressed the notices for two meetings of the School Board.
  - a. The notice for the first meeting listed a closed session for consideration and/or action concerning employment/negotiations with District personnel pursuant to Wis. Stat. § 19.85(1)(c).” At the meeting the School Board discussed and tentatively approved a collective bargaining agreement with the District’s teachers.

- b. The notice for the second meeting listed an open session for "TEA Employee Contract Approval." At the meeting the Board ratified the collective bargaining agreement.
2. Buswell complained that the first notice was defective because it failed to identify that the tentative settlement addressed hiring practices for coaches. Buswell complained that the second notice was defective because it did not indicate that, as part of the TEA collective bargaining agreement, the Board would be implementing a new hiring procedure for filling coaching vacancies.
3. The Wisconsin Supreme Court agreed with Buswell that the notice for the first meeting was not sufficient and devised a "reasonableness standard" to be applied with respect to the noticing of agenda items. Covered entities must consider three factors in noticing agenda items:
  - a. Whether the subject is of particular public interest. This involves an analysis of both the number of people who conceivably are interested in a given issue together with the "intensity" of that interest.
  - b. Whether the subject involves nonroutine action that the public would be unlikely to anticipate. This requires a review of whether the topic is "routine or novel" and, if novel, whether such an issue is "likely to catch the public unaware."
  - c. The burden of providing a more detailed notice. This involves consideration of the time and effort involved in formulating the notice. The demand for specificity is not to "thwart the efficient administration of governmental business."
4. The Wisconsin Supreme Court found the notice of the closed session "misleading" because the District used the wrong statutory subsection. Without elaboration, the Court opined that Wis. Stat. § 19.85(1)(c), authorizes closed sessions to deal with matters pertaining to individual employees, not a group or groups of employees. The Court concluded that Wis. Stat. § 19.85(1)(e) should have been cited.
5. Finding no justification for a "per se rule" that notice for closed sessions may be less specific than notice for open sessions, the Court went on to say that, insofar as the Board had negotiated into the collective bargaining agreement a new procedure for hiring

coaches that was of interest to non-teachers/people in the community, it was not a "routine" matter for which a general description of the agenda item sufficed.

6. With respect to the notice of the second meeting, the Supreme Court held that the notice adequately stated that ratification of the collective bargaining agreement would be an action item opining that a more specific notice would create an unreasonable burden on the School Board.
7. Recommendations:
  - a. When noticing a proposed closed session, make sure that the correct subsection of Wis. Stat. § 19.85 is cited.
  - b. Scrutinize whether a given topic of business is "routine" or "novel." General subject headings will suffice in cases where it reasonably apprises members of the public of the subject matter of the meeting. If a topic is routine, it lends itself to being generally described in the meeting notice. However, even with routine matters, you must determine whether public interest is so great as to require a more specific notice. For example, "Department Head Reports" should, to the extent possible, identify the items, projects, proposals which will be discussed.
  - c. If a "novel topic" is being addressed, determine the extent of specificity required to "reasonably" notify the public and the news media of the business to be transacted. Analyze the nature of the business in question, together with the degree of public interest in it.

E. Common Problems and Misconceptions Under the Law

1. Meetings by Telephonic Conference. A telephone conference call is a meeting. 69 OAG 143 (1980).
2. Exclusion of Board Members

Wis. Stat. § 19.89 prohibits, unless specific provision is made:

No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

3. Use of Recording Equipment

- a. Wis. Stat. § 19.90 applies only to open sessions.
- b. Attorney General has given his opinion that a body may adopt a procedural rule to prohibit any recording of a closed session. 66 OAG 318 (1977).

4. Public Comment at Meetings

- a. Wisconsin Statutes §§ 19.83(2) and 19.84(2), expressly authorizes governmental bodies to include the topic "Citizen Comments" on agendas during which interested persons could speak about matters both on and not on the agenda.
- b. The governmental body may discuss, but not act on, any matter raised by the public during a comment period.
- c. However, it is advisable to defer extensive discussion on any such subject item until specific notice of the subject matter can be given to the general public for discussion at a future meeting.

5. Generic Agenda Items

- a. Subject matter designations such as "old business," "new business," or "such other matters as are authorized by law" are insufficient because they do not identify a particular subject matter.
- b. A notice heading that merely refers to an earlier meeting of a governmental body or committee without identifying a particular subject of discussion is also insufficient.

6. Staff Reports

- a. In an informal opinion dated March 5, 2004, Attorney General Peg Lautenshlager has urged governmental bodies to eliminate agenda topics such as "staff reports," "miscellaneous business," or "such other matters as authorized by law" in public meeting notices.
- b. In the opinion of the Attorney General, such general subject matter designations should be avoided because they lack the specificity required by the law for public meeting notices.

- c. However, under a properly posted agenda item, a governing body may engage in information gathering only. The governing body may discuss, but not act on, any matter raised by a staff member.
- d. Because members of governmental bodies and governmental officials have regular opportunities to suggest meeting subjects for placement on the agenda, they must identify in the public notice the specific subject matter they intend to address.
- e. If a "staff reports" topic is to be utilized, it should be placed on all agendas, whether or not any staff reports are anticipated or actually occur. If this topic is used regularly, citizens will know by experience that staff members may issue reports on any matter under their control at any given meeting.

F. Adjourning To Closed Session

- 1. Closed sessions may be called only in strict conformity with Wis. Stat. § 19.85.
  - a. The topic must be one capable of being entertained under one of the specific headings, (a) to (h):
    - (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that government body.
    - (b) Considering dismissal, demotion, licensing of discipline of any public employee or person licensed by a board of commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of an evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par.(f) do not apply to any such evidentiary hearing or meeting

where the employee or person licensed requests that an open session be held.

- (c) Considering employment, promotion, compensation or performance evaluation of data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- (d) Considering specific applications of probation or parole, or considering strategy for crime detection or prevention.
- (e) Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.
- (ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (eg) Deliberating by the council on worker's compensation in a meeting in which all employer members of the council and all employee members of the council are excluded.
- (em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70(1)(b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- (g) Conferring with legal counsel for the government body who is rendering oral or written advice concerning

strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

- (h) Consideration of requests for confidential written advice from the ethics board under s. 19.46(2), or from any local government ethics board, under § 19.59(5).

b. Procedure should be strictly followed:

- (1) Meeting notice should specify potential that a closed session may be held.
- (2) Chairperson should announce the proposed closed session business, citing the specific subsection of the statute under which business is to be entertained, and ask for a motion. Debate, if any, should follow with a motion to be subjected to a roll call vote.
- (3) A vote of each member on the motion must be recorded in the minutes.
- (4) Once in closed session, entertain only the business listed for closed session action.
- (5) Follow the meeting notice: If no open session has been noticed to be held after the closed session, a subsequent open session is not allowed for at least twelve (12) hours. Wis. Stat. § 19.85(2).
- (6) A closed session may be held only as a component of an open meeting. That is to say, a governmental body may not open a meeting in closed session. It must commence its meeting in open session and then properly adjourn into closed session.

- 2. Closed sessions cannot be called to exclude a member of a governmental body from attendance of the same. Wis. Stat. § 19.89. If, on the other hand, the parent body has adopted a rule restricting the right of non-committee members to attend committee meetings, this practice is permissible.

G. Minutes Of the Closed Session

1. The statute provides that minutes of all meetings must be prepared - open and closed sessions. Wis. Stat. § 19.88(3) merely requires that:

The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

Note: Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine a decision of a government body except the election of officers of such body at any meeting. Wis. Stat. § 19.88(1).

2. There is no statutory requirement that the minutes be specific.
3. All actions must be preserved, recorded and open to public inspection, (subject to open record laws exceptions).
4. How extensive should minutes of closed sessions be? Perhaps it depends on the objectives of the governmental body, subject only to the minimum requirements of Wis. Stat. § 19.88(3).

- a. Note State ex rel Zinngrabe v. The School District of Sevastapol, 146 Wis.2d 629 (1988). The Appellant requested minutes of a closed session meeting of the school board held on 3 occasions. The superintendent advised him that no minutes were kept "because no formal action was taken at any of these meetings." The court agreed that there was full compliance with the Public Records Law, stating:

The open records law does not dictate which documents are to be created or direct the government to maintain specific records. The duty to maintain such records must be found elsewhere in the law. p. 635.

- b. Recommendations: Record all formal action taken. If no formal action taken, record brief general statement as to subject matter of meeting.

## H. Voting in Closed Session

1. State, ex. rel. Cities Service Oil Co. v. Board of Appeals, 21 Wis.2d 516 (1963): where voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process it is properly entertained in a closed session. See also 74 OAG 70 (1985).
2. Examples of permissible voting in closed session:
  - a. Voting during the course of deliberation following a quasi-judicial hearing.
  - b. Voting to hire an employee.
  - c. Voting to establish a bargaining position vis a vis a third party with which the governmental body desires to contract.
  - d. Voting to discontinue consideration of a particular individual for appointment, for example, to committee, upon the basis of financial, medical, social or personal histories which, if discussed in public, would be likely to have a substantial adverse effect upon that person.
  - e. Voting upon the development of alternative settlement proposals to be submitted to another party to a lawsuit in which the governmental body is involved.
3. The test to determine the appropriateness of such action was clearly set forth in the opinion of the Attorney General 66 OAG 93 (1977).
  - a. The board must have convened itself into a proper executive session; and
  - b. The same reason for convening itself into executive session must apply to the need to vote in executive session; i.e., to keep the action in confidence;
  - c. Mere convenience in voting in executive session is impermissible. The better practice is to notice the meeting to convene in open session, adjourn to executive session under Wis. Stat. § 19.85(1) and then reconvene into open session for action. Wis. Stat. §19.85(2).

- d. The exception of voting an executive session is an extremely limited exception.

### III. ETHICS LAW

#### A. River Falls Code of Ethics

##### 1. Responsibility of Public Office

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the constitution of this state and carry out impartially the laws of the nation, state and city and to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their prime concern. Their conduct in both their official and private affairs should be above reproach so as to foster respect for all government. (Municipal Code 2.28.020).

##### 2. Dedicated Service

- a. All officials and employees of the city shall be loyal to the objectives expressed by the electorate and the programs developed to attain these objectives.
- b. Officials and employees shall not exceed their authority or breach the law or ask others to do so and they shall work in full cooperation with other public officials and employees unless prohibited from so doing by law or by official recognized confidentiality of their work. (Municipal Code 2.28.030).

##### 3. Fair and Equal Treatment

- a. Use of Public Property. No official or employee shall request or permit the unauthorized use of city-owned vehicles, equipment, materials or property for personal convenience or profit.
- b. Obligations to Citizens. No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen. (Municipal Code 2.28.040).

4. Conflict of Interest

Financial and Personal Interest Prohibited. No official or employee, whether paid or unpaid, shall engage in any business or transaction, nor shall such official or employee act in regard to financial or other personal interest, direct or indirect, when such actions are incompatible with the proper discharge of his or her official duties or when such actions impair his or her independence of judgment or action in the performance of his or her official duties. (Municipal Code 2.258.050).

5. Disclosure of Interest In Legislation

Any member of the city council who has a financial or personal interest in any proposed legislation before the council shall disclose on the records of the council the nature and extent of such interest. (Municipal Code 2.28.060).

6. Penalty and Sanctions

Violation of any provision of this chapter may constitute a cause for suspension, removal from office or employment or censure and may also be punishable under the provisions of Chapter 1.20 of this municipal code. (Municipal Code 2.28.070).

B. Code of Ethics for Public Officials and Employees, Wis. Stat. Ch. 19, Subchapter III.

1. Scope of coverage of Ethics Code

- a. All individuals holding an elective office of a local government (e.g., Common Council members)
- b. All individuals holding an appointive office or position of a local government (e.g., City Administrator)
- c. The Code expressly excludes from coverage "positions limited to the exercise of ministerial action, clerical positions, and positions filled by independent contractors"

"Ministerial action" is defined to mean "an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own

judgment as to the propriety of the action being taken." Wis. Stat. § 19.42(8).

2. Prohibited conduct

- a. The Ethics Code prohibits a local government official, employee or candidate from engaging in the following conduct:
- (1) Using 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. Wis. Stat. § 19.59(1)(a).
  - (2) Soliciting or accepting 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 judgments, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. Wis. Stat. § 19.59(1)(b).
  - (3) 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. Wis. Stat. § 19.59(1)(c)1.
  - (4) Using 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. Wis. Stat. § 19.59(1)(c)2.
  - (5) "Immediate Family" means 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. § 19.42(7).
- b. Offer or acceptance of items of value Wis. Stat § 19.59(1)(a) and (b)

- (1) "Anything of value" is defined to mean "any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment," excluding "compensation and expenses paid by the state...or hospitality extended for a purpose unrelated to state business by a person other than an organization." Wis. Stat. § 19.42(1).
- (2) The Wisconsin Ethics Commission interprets the phrase "anything of value" to mean anything of more than nominal or token value offered because of the person's holding a public office.
- (3) The Ethics Commission has declined to set a specific dollar amount, but recommends refusing "any item or service that could reasonably be expected to influence an official's vote, official actions or judgment" or "could reasonably be considered a reward for any official action or inaction by the local public official."
- (4) Factors the Ethics Commission may consider are whether the item:
  - (a) is of more than nominal or token value;
  - (b) is being offered to an official because of the official's position;
  - (c) is for private benefit;
  - (d) is "anything of value" as defined in § 19.42(1); and
  - (e) is being offered to the official for any reason that could reasonably be expected to influence the official's judgment or action or be considered a reward for past action or actions.
- (5) See also, Wisconsin Ethics Commission guidance documents, attached as Exhibits A & B.

c. Conflicting interests [§19.59(1)(c)]

- (1) Local public officials are prohibited from taking any official action substantially affecting a matter in which the official or the official's family or associated organization has a substantial financial interest.
- (2) Additionally, the use of public funds and resources for personal, family, or business purposes is also prohibited.

2. Enforcement and Penalties

- a. Civil forfeiture of up to \$1,000
- b. Criminal penalties for intentional violation

B. Misconduct in Public Office

1. Wis. Stat. § 946.12 provides:

Any public officer or public employee who does any of the following is guilty of a Class I felony:

- (1) 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
- (2) 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
- (3) 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

(4) 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

(5) 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.

2. A common council member who violates § 946.12 may be subject to a fine of up to \$10,000 of imprisonment of not more than three years and six months, or both.

C. Conflicts of Interest

1. Wis. Stat. § 946.13(1) provides:

Any public officer or public employee who does any of the following is guilty of a Class I felony:

(a) 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, direct or indirect, 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 official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's 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, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

2. Exemptions:
  - a. Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year.
  - b. Other specific exceptions set out in § 946.13(2) and (5) - (12).
3. A Council member who violates § 946.13 is subject to a fine of up to \$10,000 or imprisonment for not more than three years and six months or both.
4. Council action is void as a matter of law – § 946.13(3)
5. Criminal motive (i.e., criminal intent) is not required

# **EXHIBIT**

# **A**

# Wisconsin Ethics Commission

## Local officials' receipt of food, drink, favors, services, etc.

Wisconsin law forbids a public official to use free or discounted transportation, traveling accommodation, or communication services for which the supplier would usually charge [§946.11, Wisconsin Statutes; Art. 13, §11, Wisconsin Constitution],<sup>1</sup> Otherwise – Consistent with the statutes administered by the Wisconsin Ethics Commission, *local public officials*<sup>2</sup> *may accept and retain:*

- a. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION.**  
Food, drink, transportation, lodging, items, and services which are offered for a reason unrelated to the recipient's holding a public position [§ 19.59(1)(a)] and which could not reasonably be expected to influence an official's vote, official actions or judgment, nor reasonably be considered a reward for any official action or inaction;
- b. **EXPENSES PROVIDED BY OR FOR THE BENEFIT OF THE LOCAL GOVERNMENTAL UNIT.**  
Food, drink, transportation, lodging, or payment or reimbursement of costs that are provided by or for the benefit of the local governmental unit, not for a private benefit; and
- c. **ITEMS OF INSUBSTANTIAL VALUE.**  
Mere tokens and items or services of only nominal, insignificant, or trivial value.

### STATUTORY RESTRAINTS

Except as noted on the other side of the page, *local public officials should not accept:*

1. **ITEMS OR SERVICES OFFERED BECAUSE OF PUBLIC POSITION.** Any item or service, including food, drink, and travel, of more than nominal value offered because of the person's holding a public office [§ 19.59(1)(a)];
2. **ITEMS THAT COULD INFLUENCE JUDGMENT.** Any item or service that could reasonably be expected to influence an official's vote, official actions or judgment [§19.59(1)(b)];
3. **REWARDS FOR OFFICIAL ACTION.** Any item or service that could reasonably be considered a reward for any official action or inaction [§19.59(1)(b)]; and
4. **TRANSPORTATION OR TRAVELING ACCOMMODATIONS.** Discounted transportation, traveling accommodations, or communication services for which the supplier would usually charge [§946.11; Art. 13, §11].

<sup>1</sup> Consult local ordinances and other state law not administered by the Wisconsin Ethics Commission for any additional restrictions.

<sup>2</sup> "Local public officials" include: (a) elected officers of political subdivisions and special purpose districts of the state; (b) county administrators or administrative coordinators; (c) city or village managers; (d) individuals appointed to a position in a political subdivision or special purpose district for a specified term; and (e) individuals appointed to a position by the governing body, executive, or administrative head of a political subdivision or special purpose district and serving at the pleasure of the appointing authority.

*This is a guide. For authoritative information consult Wisconsin Statutes.*

*Specific questions may be directed to your local governmental attorney or local ethics board.*

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## Wisconsin Ethics Commission

### Local officials' receipt of food, drink, favors, services, etc.

**To analyze a situation in which you are offered items or services, ask yourself these questions:**

1. With respect to the item or service offered:
  - a. Is it being offered because of my public position?
  - b. Is it of more than nominal or insignificant value?
  - c. Is it primarily for my personal benefit rather than for the benefit of my local unit of government?

If you answer "yes" to all three questions, you may not accept the item or service.

2. Would it be reasonable for someone to believe that the item or service is likely to influence my judgment or actions or that it is a reward for past action? If you answer "yes," you may not accept the item or service.

**If you have any doubts about a situation, seek advice from your local governmental attorney.**

# **EXHIBIT**

# **B**

# Wisconsin Ethics Commission

## *Citizen's Guide*

### Standards Of Conduct For Local Government Officials

*Wisconsin Statutes* establish standards of conduct for all of our state's governmental officials, including local officials. These legal requirements apply to elected and key appointed officials of our state's counties, cities, villages, towns, school boards, and sewerage and other special districts.<sup>1</sup>

**Standards of conduct.** In general, a local public official should not:

- ***ACT OFFICIALLY IN A MATTER IN WHICH THE OFFICIAL IS PRIVATELY INTERESTED***
- ***USE GOVERNMENT POSITION FOR PRIVATE FINANCIAL BENEFIT***
- ***ACCEPT TRANSPORTATION, LODGING, FOOD, BEVERAGES, OR ANYTHING ELSE OF MORE THAN TOKEN VALUE OFFERED BECAUSE THE OFFICIAL HOLDS A GOVERNMENT POSITION***
- ***SOLICIT OR ACCEPT REWARDS OR ITEMS OR SERVICES LIKELY TO INFLUENCE THE OFFICIAL***
- ***OFFER OR PROVIDE INFLUENCE IN EXCHANGE FOR CAMPAIGN CONTRIBUTIONS***
- ***BE FINANCIALLY INTERESTED IN A GOVERNMENT CONTRACT THE VALUE OF WHICH EXCEEDS \$15,000 AND FOR WHICH THE OFFICIAL IS AUTHORIZED TO TAKE SOME DISCRETIONARY ACTION (EVEN IF THE OFFICIAL ABSTAINS)***<sup>2</sup>

**Financial disclosure.** Some local governments make available a list of the employers and financial interests of their government's officials.<sup>3</sup> Most do not. The decision to collect this information is one that the legislature has left to each unit of government. To learn if your county, municipality, or town provides this information, ask your county or municipal clerk.

**Addressing issues before they become problems.** To deal with a conflict between a private interest and governmental responsibilities before an official takes a vote or enters into discussions on a matter, the official can either resolve the matter by relinquishing the private interest or mitigate the problem by temporarily withdrawing from exercise of governmental responsibilities. By seeking advice beforehand, an official can determine whether statutory restrictions permit the official to participate in a matter or to accept items or services of value.

Ordinarily, the legal advisor for the unit of government of which the official's position is a part is in the best position to advise the government official about a matter involving ethical standards of conduct. Sometimes, a statewide association of local governments will advise an official.<sup>4</sup>

If, after studying the legal standards and gathering the pertinent facts, the legal counsel is uncertain about what advice to offer, the lawyer may direct a letter to the Wisconsin Ethics Commission stating the pertinent facts and law, tentative conclusion, and basis for it, and ask that the Wisconsin Ethics Commission issue an opinion concerning the interpretation of §19.59, the Code of Ethics for Local Government Officials, Employees and Candidates. Written requests for advice are confidential. No

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<sup>1</sup> §19.59, *Wisconsin Statutes*.

<sup>2</sup> §946.13, *Wisconsin Statutes*. See text of statutes for exceptions to general rule.

<sup>3</sup> Among the local governments requiring their officials to identify information about their sources of income and investments are the cities of Madison and Milwaukee and the counties of Dane, Milwaukee, and Wood.

<sup>4</sup> Examples include Wisconsin Counties Association, League of Wisconsin Municipalities, Wisconsin Towns Association, Wisconsin Association of School Boards.

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member or employee of the Ethics Commission may make public the identity of anyone requesting an advisory opinion or of persons mentioned in an opinion. Periodically, the Commission publishes summaries of its opinions after making sufficient alterations to prevent the identification of the requestor and persons mentioned in the opinions. The *Statutes* do not authorize the Commission to issue an opinion to a citizen or to an official or representative of a local government other than the local government's legal counsel.

**Complaints.** If you believe that an official of a county, city, village, town, school board, or special purpose district has violated a standard of conduct that state law requires the official to observe, you may file a complaint with the Commission, or with the district attorney for the county in which the activity occurred.

Your complaint should describe the pertinent facts succinctly. State that you swear or affirm that the information you are providing is true to the best of your knowledge, information, and belief. Have a notary or other person authorized to administer an oath witness your signature to the complaint. Deliver the complaint to the Commission or district attorney, in person, or by mail, or other appropriate way you find convenient.

Allow the Commission or district attorney a reasonable length of time to look into the matter. It may take several weeks to look into the facts and law in order to make a good decision about how to proceed.

If the complaint about a local public official is filed with the Wisconsin Ethics Commission, the Commission's policy is to refer it to the local district attorney. If the district attorney has not responded to a complaint within 60 days of a referral, the Commission may refer the matter to the Attorney General.

Individuals may also file a complaint directly with the district attorney. If the district attorney has not filed a complaint or replied to you within 20 days of your filing a complaint with that office, you may send a copy of your complaint to the Attorney General's Office, explaining that the district attorney, after considering your complaint for 20 days or more, has not begun an action against the person you complained about, and ask the Attorney General to enforce the complaint. If the Attorney General also declines to prosecute the matter, you will at least have the satisfaction that two law enforcement agencies have had the opportunity to review your complaint and act upon it. The Wisconsin Ethics Commission cannot overturn the decisions of the district attorney or Attorney General or, independent of them, enforce standards of conduct for local government officials.