CR 84-200

STATE OF WISCONSIN

ETHICS BOARD

I, R. Roth Judd, Executive Director of the State of Wisconsin Ethics Board, and legal custodian of the Ethics Board's records, certify that the attached order relating to rules of the State of Wisconsin Ethics Board was adopted by the Ethics Board on February 26, 1985.

I further certify that I have compared this copy of the order with the original filed with the Ethics Board and that it is a true copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this 26th day of February, 1985, in the City of Madison.

R. Roth Judd
Executive Director
State of Wisconsin Ethics Board

RRJ:sb

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5-1-85

ORDER OF THE ETHICS BOARD

RENUMBERING, AMENDING, REPEALING, RECREATING, AND CREATING RULES

Relating to Wisconsin's Code of Ethics

for Public Officials and Employes

To repeal Eth 1.01, 1.02(2), 2.07(d) and (e), 2.09, 3.02 and 3.03, and ch. 6; to renumber Eth 2.045(1) to (4); to renumber and amend Eth 1.02(intro) and (1), 2.07(1)(intro.) and (a) to (c)3; to amend Eth 2.045(intro.), 3.01, and 3.30; to repeal and recreate Eth 2.08, 3.04, 5.01; and to create Eth 2.045(2) relating to the Code of Ethics for Public Officials and Employes.

ANALYSIS PREPARED

BY THE

ETHICS BOARD

SECTION 1. This SECTION repeals an unnecessary statement of the Ethics Board's authority to adopt rules.

SECTION 2. This SECTION recodifies the meaning of "hospitality" and in so doing removes unneeded words and the constitutional problem of proving beyond a reasonable doubt that a reasonable person would conclude that something is probable as discussed by the Wisconsin Supreme Court in State v. Nye, 100 Wis. 2d 398 (1981).

SECTION 3. This SECTION repeals a definition of "income" that was made unnecessary by the Legislature's definition of the term by 1983 Act 166.

SECTIONS 4-6. These SECTIONS renumber, amend, and create rules explaining what is meant by "identity" in sec. 19.44(1), Stats., which instructs a person required to file a Statement of Economic Interests to list the identity of certain businesses, organizations, or individuals.

SECTIONS 7-8. These SECTIONS renumber, amend, and repeal rules explaining how to determine the value of securities when the securities' value must be computed for purposes of sec. 19.44(1), Stats.

SECTION 9. This SECTION repeals the requirement that a person required to file a Statement of Economic Interests indicate, by signing the Statement, the truth of the information contained on the Statement. This rule was rendered obsolete by the creation of sec. 19.44(4), Stats., by the Laws of 1977. The recreated rule establishes the method for determining when a person has a 10% or greater interest in a partnership when that determination is necessary under sec. 19.44(1)(f), Stats.

SECTION 10. This SECTION deletes a rule that requires the Ethics Board to notify a person who has not filed a Statement of Economic Interests by the statutorily established deadline and that specifies the content of that notice. Since this rule's creation in 1976, the Legislature established, by the Laws of 1977, a specific statutory mechanism for this notice requirement and subsequent enforcement.

SECTION 11. This rule merely states the location of the Ethics Board's office.

SECTION 12. This SECTION repeals the sections concerning the computation of time within which an act is to be done and the method of serving documents on the Ethics Board and other parties to the Board's proceedings. These sections are unnecessary because the Legislature has already addressed the subject with which they are concerned at sec. 990.001(4), Stats.

SECTION 13. This SECTION provides that when the Ethics Board has prepared a typed transcript of a hearing, anyone may obtain a copy of that transcript for the actual copying cost. In instances in which the Board has recorded a proceeding but not produced a typed transcript of it, anyone may obtain a typed transcript by paying the costs of its production. The Ethics Board must waive these fees for an impecunious party to a proceeding.

SECTION 14. This SECTION simplifies the language of s. Eth 3.30 but has no substantive effect.

SECTION 16. This SECTION merely recasts an existing rule into standard format.

SECTION 17. This SECTION deletes the Ethics Board's rules concerning inspection of public records because since their adoption the Legislature has addressed this matter at secs. 19.31-19.39, Stats.

SECTION 18. This SECTION provides that the modification of the Ethics Board's rules made by the accompanying order will take effect on the first day of the month following the order's publication in the Wisconsin Administrative Register.

Pursuant to the authority vested in the state of Wisconsin ethics board by ss. 19.48(1) and 227.014(2), Stats., the state of Wisconsin ethics board repeals, renumbers, renumbers and amends, amends, repeals and recreates, and creates rules interpreting ss. 19.42(1), 19.44(1), 19.46(2), 227.013(3), and 227.07(8), as follows:

SECTION 1. Eth 1.01 is repealed.

SECTION 2. Eth 1.02(intro.) and (1) are renumbered Eth 1.02 and amended to read:

Eth 1.02 HOSPITALITY. When used in ~~ss. 19.41 to 19.58~~ s. 19.42(1), Stats. ~~and rules adopted by the board, unless the context otherwise requires, the following words and phrases having these meanings:~~

~~(1)~~ ~~HOSPITALITY. (a) Defined. "Hospitality"~~ , "hospitality" includes but is not limited to meals, beverages and lodging which a host other than an organization offers a guest on premises owned or occupied by the host or his or her immediate family as the host's prinicipal or seasonal residence.

~~(b) Relation to state business.~~ Hospitality is unrelated to state business if~~, after consideration of the circumstances, a reasonable person would conclude that it is probable that~~ the hospitality would be extended if the ~~guest~~ recipient or a member of the ~~guest's~~ recipient's immediate family did not hold a state public office.

Note: Anything of value is defined at s. 19.42(1), Stats., and later appears at ss. 19.42(6) and 19.45(2), (3) and (4), Stats. Specifically excluded from the term is ". . . hospitality extended for a purpose unrelated to state business by a person other than an organization."

In general, these sections provide that a state public official may not use his or her public office to obtain anything of substantial value and may not accept anything of value if it could reasonably be expected to influence the official's judgment. Moreover, a state official must report annually the acceptance of anything of value received as a gift from someone other than a relative if its value exceeds $50.

Eth 1.02 identifies the most common situations coming within the hospitality exclusions. Many other circumstances may come within the exclusion (e.g., wedding receptions, theatre parties, hunting trips) but because of their diverse character no general rule can be stated. Written opinions on the term's application to situations not addressed here may be obtained from the board on request.

The rule also identifies the circumstances under which hospitality is unrelated to state business.

SECTION 3. Eth 1.02(2) is repealed.

SECTION 4. Eth 2.045(intro.) is renumbered Eth 2.045(1)(intro.) and is amended to read:

Eth 2.045 IDENTITY OF INDIVIDUALS AND ORGANIZATIONS. (1) The ~~identification~~ identity of an organization under s. 19.44(1),Stats., is information sufficient to enable a person to ascertain without extraordinary diligence the following information:

SECTION 5. Eth 2.045(1) to (4) are renumbered Eth 2.045(1)(a) to (d).

SECTION 6. Eth 2.045(2) is created to read:

Eth 2.045(2) The identity of an individual includes the individual's name and information sufficient to distinguish the person from any other individual.

SECTION 7. Eth 2.07(1)(intro.) and (a) to (c)3 is renumbered Eth 2.07(intro.) and (1) to 3(c) and amended to read:

Eth 2.07 VALUATION. For the purpose of determining under s. 19.44(1), Stats., whether ~~economic interests~~ securities are ~~required to be disclosed under s. 19.44, Stats.,~~ valued at $5,000 or more ~~the following methods of valuation shall be used:~~

(1) The value of securities listed on a stock exchange ~~shall be~~ is the closing price on ~~such~~ the exchange.

(2) The value of ~~unlisted~~ securities not listed on a stock exchange but traded in the over-the-counter market ~~shall be~~ is the average of the bid and asked price.

(3) The value of securities for which no market information is readily available ~~shall be determined as follows~~ is:

a. ~~Common~~ For common stock ~~or~~ and equivalent securities ~~book value (~~, the issuer's net worth divided by the number of outstanding ~~voting~~ shares ~~times~~ multiplied by the number of shares held~~)~~.

b. ~~Preferred~~ For preferred stock , the redemption price or ~~par or~~, if not redeemable, the stated value ~~if not redeemable~~.

c. ~~Debt~~ For debt securities, the unpaid balance.

SECTION 8. Eth 2.07(1)(d) and (e) are repealed.

SECTION 9. Eth 2.08 is repealed and recreated to read:

Eth 2.08 PARTNERSHIP INTEREST. A partner has a 10% or greater interest in a partnership under s. 19.44(1), Stats., if:

(1) The partner would be entitled to receive 10% or more of the proceeds from the partnership's dissolution, or

(2) During the partnership's accounting period covering the date for which the calculation is made the partner, either by prior agreement or by the partner's best estimate, received or will be entitled to receive 10% or more of the partnership's net profit or will be credited with 10% or more of the partnership's net loss.

SECTION 10. Eth 2.09 is repealed.

SECTION 11. Eth 3.01 is amended to read:

Eth 3.01 COMMUNICATIONS AND DOCUMENTS ADDRESSED TO BOARD. ~~(1)~~ All written communications and documents intended for the board should be addressed to the State of Wisconsin Ethics Board, ~~122 West Washington Avenue~~ 125 South Webster Street, Madison, Wisconsin ~~53703~~ 53702 and not to individual members of the board or its staff. All communications and documents delivered at the board's office are officially received.

SECTION 12. Eth 3.02 and 3.03 are repealed.

SECTION 13. Eth 3.04 is repealed and recreated to read:

Eth 3.04 TRANSCRIPTS. (1) If the board, on its own behalf, causes a typed transcript of a proceeding to be prepared, the board shall furnish anyone with a copy of the typed transcript upon the payment of the actual cost of copying the transcript. Otherwise, the board, on behalf of another, shall cause a typed transcript of a proceeding to be prepared and furnished to the requestor upon the payment of the cost of transcription.

(2) The board will waive the fees established in sub. (1) for a party to a proceeding who establishes by affidavit or other means that the party is impecunious.

SECTION 14. Eth 3.30 is amended to read:

Eth 3.30 REQUESTS FOR WRITTEN ADVICE. ~~In instances where~~ When delay is of substantial inconvenience or detriment to a ~~party~~ person requesting the board's written advice regarding the propriety of ~~any~~ a matter to which ~~he or she~~ the person is or may become a party, the board's executive director may, with the advice and consent of the chair, or if ~~he or she~~ the chair is unavailable, with the advice and consent of the ~~next ranking officer of the board~~ vice chair, or if ~~he or she~~ the vice chair is unavailable, with the advice and consent of ~~the secretary or other~~ any member of the board, advise the state public official. Written advice prepared by the executive director pursuant to this rule ~~shall have~~ has the full force and effect of written advice given by the board.

SECTION 16. Eth 5.01 is repealed and recreated to read:

Eth 5.01 FORMS. Each of the following forms may be obtained from the board, 125 South Webster Street, Madison, Wisconsin, 53702.

(1) Statement of Economic Interests filed by candidates and continuing state public officials (Eth 1).

(2) Statement of Economic Interests filed by nominees and new state public officials (Eth 2).

(3) Quarterly Report of Economic Transactions (Eth 3).

(4) Request to Examine Statements of Economic Interests (Eth 4).

SECTION 17. Chapter Eth 6 is repealed.

SECTION 18. EFFECTIVE DATE. This order shall take effect as provided in s. 227.026(1)(intro.), stats.

This order adopted by the State of Wisconsin Ethics Board at Madison on February 26, 1985

STATE OF WISCONSIN ETHICS BOARD

By R. Roth Judd, Executive Director