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Ethics & Conflicts of Interest—FAQs (frequently asked questions)

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This paper is directed particularly at local governing body members because they are the primary decision-makers in a local governmental unit and therefore the ones most subject to conflicts. (A “local governmental unit” includes a county, city, village or town, special purpose district or subunit of any of the foregoing. Sec. 19.42(7u), *Wis. Stats.*) Nevertheless, other local officials and employees may face such questions when they make decisions on matters in which they have a personal interest or a close connection with a person or organization with an interest in the matter. The paper is divided into the following headings:

- ◆ Background & General Matters (##1-5)
- ◆ Making Fair Decisions: Developing Policy; Applying the Law (##6-8)
- ◆ Code of Ethics for Local Officials (##9-11)
- ◆ Gifts, Food & Drink, Conferences, Political Contributions, etc. (##12-17)
- ◆ Contracts (##18-20)
- ◆ Compatibility Issues: Conflicts in Holding More than One Local Office or Position & in Job Creation & Selection (##21-24)
- ◆ Other provisions (#25)

Background & General Matters

1. *What is the purpose of ethics and conflicts of interest laws?* The purpose of these laws is to prevent self-dealing, undue influence and bias, and to preserve public confidence in local government by avoiding the appearance of impropriety. In general, these laws, with the open meetings and public records laws, while occasionally cumbersome, provide an important part of the foundation for our democratic government.

2. *Where can I find the laws that apply to ethics and conflicts of interest?* These laws are found in various locations. First, check your local unit’s ordinances and rules to see what provisions may apply to you. Perhaps the most basic source of ethics is the local official’s oath of office in which he or she swears to “faithfully discharge the duties” of the office; these official duties include the “performance to the best of his or her ability” and the nonperformance of

forbidden acts. Sec. 19.01(1) and (3). The Code of Ethics for Local Government Officials (also referred to as the “Code of Ethics” in this paper) is found in ch. 19, *Wis. Stats.* See statutory sections 19.42 (definitions), 19.58 (criminal penalties) and 19.59 (prohibitions, procedures and civil penalties). Another important statute is sec. 946.13, which prohibits certain private interests of public officers and employees in public contracts. At a more general level, concepts of fairness and due process are covered by court decisions interpreting the Wisconsin and Federal constitutions (see #6). Finally, the “common law” developed by the courts is another source of law (see #7).

3. *The existence of so many laws is confusing. How can I find answers to my questions?* As a local official, you should familiarize yourself with any local ordinances or rules you may have and with the statutory Code of Ethics for Local Government Officials. A good place to find information is on the Wisconsin Government Accountability Board (GAB) Ethics Division website <http://ethics.state.wi.us/>. (Note: The GAB now includes the former Elections Board and Ethics Board as divisions; the provisions of the laws affecting local officials remain the same.) Two Ethics Division publications, available on the website, are particularly useful: Eth 219 (Local officials’ receipt of food, drink, favors, services, etc.) and 240 (Mitigating Conflicting Interests: Private Interest vs. Public Responsibility); see also Eth 235 (Disposition and reporting of gifts). The website has a link to the statutory Code of Ethics for Local Government Officials. In addition, the publications of the Wisconsin local government associations include explanatory materials on these topics. Also, the Local Government Center offers a yearly WisLine program on this topic. At the LGC website, <http://lgc.uwex.edu/>, click on the WisLine link for the “Open Government” series. To find any statute on-line, from the LGC website, click on “Web Links,” next on “Internet Resources” and finally on the “Wisconsin Statutes” link to access any statute.

In addition to checking existing information, a local official may wish to obtain advice from an attorney or ethics board. Under the Code of Ethics for Local Officials, an individual may request a confidential advisory ethics opinion from the unit’s ethics board, or if there is none, from the unit’s attorney. Sec. 19.59(5). Following this advice provides the local official with a legal defense if later prosecuted for a violation. The unit’s attorney or local government association may request an advisory opinion from the state GAB’s Ethics Division. Sec. 19.59(6).

4. *How should ethics and conflicts of interest questions be approached?* Carefully and ahead of time. It’s a good idea to learn to spot potential conflict situations. You can ask yourself these questions:

--*What is the nature of the decision?* If the decision involves applying the law to specific fact situations affecting individuals, such as an application for or revocation of a permit before a body, or disciplinary actions before a body, more stringent laws apply. See #7, below.

--*Does the matter involve a public contract in which I have a direct or indirect financial interest?* These questions demand careful consideration. See ##18-20.

--*Does the action affect myself, a member of my family, or an organization with which my family member or I are associated?*

--*How would I like to read about my actions on this matter in the newspaper?*

--*Would taking part in an official capacity seem fishy?*

If the answer to any of the last 4 questions is “yes,” you should look into the matter further.

5. What should I do if I decide to abstain? It should be understood that abstention goes beyond merely not voting on the matter. You must remove yourself from the decision-making body's table and refrain from involving yourself in any way in discussions or other information exchanges in your *official* capacity. Your abstention or absence should be noted in the record. Also, abstentions should be used only when warranted, rather than to avoid taking part in difficult or controversial matters. However, it should be noted that a member of a local legislative body has a First amendment right to abstain, *Wrzeski v. City of Madison, Wisconsin*, 558 F. Supp. 664 (1983).

Making Fair Decisions: Developing Policy; Applying Policy

6. The statutes have gaps in their coverage. Are there other limits on my ability to vote on policy or administrative matters? Yes. The *common law* (i.e., the law developed by the courts) may prohibit a vote by a member of a body, such as a local governing body or board or commission member, even if statutory law does not, on matters such as adopting or amending ordinances, entering into contracts, hiring employees and deciding whether to litigate. The Wisconsin Ethics Board (now GAB Ethics Division) has noted in recent opinions that common law principles may disqualify a member of a body from voting on a matter where the member has a direct pecuniary interest not shared by others similarly situated. See, e.g., *Wis Eth Bd* opinions 2003-09 and 2003-17 (citing *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879) and 36 *Op. Att'y Gen.* 45, 46 (1947)). The Ethics Division interprets the Code of Ethics for Local Officials in a similar fashion when local officials who make policy decisions that affect themselves, "immediate family" members or "organizations" with which they are "associated" (as these terms are statutorily defined). In such cases, the official may vote or take action if the interest affects a class of similarly-situated interests, and the impact of the action on the official, family member or organization is not significantly different from the impact on the others affected. See the Ethics Division guidelines in "Eth 240."

In addition, the common law restriction is similarly stated in *Robert's Rules of Order Newly Revised (10th Edition)*, sec. 45, which states that, "No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization." Many communities have adopted *Robert's* to apply in situations not covered by their ordinances or the statutes. See, e.g., *Ballenger v. Door County*, 131 Wis.2d 422, 431 (fn. 6) (Ct. App. 1986).

7. What limitations apply to my actions when applying the law? You act in a "quasi-judicial" capacity when you apply the general law (i.e., statutes and ordinances) to specific fact situations. Examples include granting a zoning variance or conditional use permit or revoking an alcohol beverage license. In such cases constitutional law and the common law apply in addition to the statutory ethics and conflicts laws. In quasi-judicial proceedings, you must provide due process (a constitutional concept) and be fair and unbiased. This means that you will have to abstain in more situations than you would have to when making policy, such as voting on an ordinance, or when acting in an administrative capacity, such as in hiring or awarding a contract.

In quasi-judicial proceedings you should consider whether you could be seen as biased regarding either the person or the issue involved, although having opinions on local matters is not improper. For example, while it would be permissible to publicly hold the view that an

ordinance should be amended, it would be improper to disparage the ordinance at a proceeding on an application. Similarly, it is improper to show bias regarding the applicant. In one case, the chair of a zoning board of appeals (BOA) called the applicable standard for a permit a loophole in need of closing and made critical personal comments about the applicant. Not surprisingly, an appeal to court resulted in the matter being returned to the BOA for a new hearing without the participation of the BOA chair. *Marris v. City of Cedarburg*, 176 Wis. 2d 14 (1993). Similarly, in a recent case, the court ruled that a conditional use permit application had to be reheard because of the improper participation on the decision-making body of a member whose letter in support of the applicant was a part of the record. *Keen v. Dane County*, 269 Wis. 2d 488 (Ct. App. 2003). Officials in these proceedings must be careful to base their decisions on the arguments and evidence presented in the record, including the hearing, and should avoid outside sources and contacts, such as discussions with the parties or neighbors outside of the meeting or hearing room.

Violations of these principles of due process and fairness, if challenged in court, may result in having the matter sent back to the body to do over again properly. Enforcement typically does not involve damages or other penalties, although it could in certain egregious situations, involving, for example, deliberate wrongdoing and civil rights violations.

8. *How does the above reasoning apply when I, as a governing body member, am faced with a vote on a rezoning of property?* Rezoning is in a grey area of the law. In some states they are treated as quasi-judicial, but in Wisconsin they are viewed as legislative. How you proceed depends upon the nature of the rezoning. Applying the concept (#6 above) of whether you are a member of a class of similarly-affected persons is helpful. So if it's your next-door neighbor who's asking for the rezoning, you should abstain from any official involvement. But if the rezoning is for a major project that affects, for example, the entire area where you live, and you are not affected more than others, it seems legitimate for you to take part in the vote. Close situations like this should be investigated prior to becoming involved in an official capacity.

Code of Ethics for Local Officials

9. *Briefly, what is prohibited by the Code of Ethics for Local Officials?* The Code generally prohibits a "local public official" from using his/her office or position to obtain gain for the private benefit of himself/herself, an "immediate family" member or for an "organization" with which the official is "associated" (as these terms are defined in the law; item #10, following). Secs. 19.42 & 19.59, *Wis. Stats.* In addition, a recent provision prohibits a local public official from engaging in "pay to play" political agreements. See #17 below.

The language of sec. 19.59(1) contains the specific, lengthy wording of the prohibitions, which may be categorized as prohibitions on private gain, illegal influence or rewards, and involvement when the local official, a member of the official's immediate family, or an organization with which the official is associated has a substantial interest in the matter (see the following definitions).

10. *Who is covered by the Code of Ethics for Local Officials?* The local ethics code applies to local public officials who hold "local public office." Sec. 19.42(7w) and (7x), *Wis. Stats.*

"Local public office" includes: elected officers of a local governmental unit; a county administrator or coordinator, or city or village manager; appointed local officers and employees

who serve for a specified term; and officers and employees appointed by the local governing body or executive or administrative head, who serve at the pleasure of the appointing authority.

“Local public office” *does not* include: independent contractors; persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers; or persons appointed for indefinite terms, who are removable for cause. Finally, the term “local public office” does not include a municipal judge; this office is considered a state office. Sec. 19.42(13)(h).

Note: Persons who are appointed for indefinite terms and are removable for cause, such as police officers and firefighters, as well as their chiefs, are omitted from coverage because the definition of “local public office” covers only those appointed officials who serve for a specified term or who serve at the pleasure of the local governing body or executive or administrative head (above). The reason for this omission is not clear. A town, village, city or county, may, however, use a local ethics ordinance to fill gaps in the statute's coverage.

Other key terms in the Code of Ethics for Local Officials are: “immediate family,” “organization” and “associated.” Sec. 19.42(2), (7) and (11). The “**immediate family**” of a local public official means the official’s spouse, and a “relative by marriage, lineal descent or adoption” who receives from the official or provides to the official more than one-half of his or her support. Note that, with the exception of a spouse, the coverage of the term is based on a support test. An official’s parent or child, for example, is not covered unless the support test is met.

“Organization” is broadly defined to cover “any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.” Note that nonprofits are included and governmental units are excluded. Finally, **“associated,”** in reference to an organization, refers to the situation in which the public official or a member of his or her immediate family is a director, officer, trustee, authorized representative or agent of the organization; or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity of the organization. Note that employees as such are not covered.

11. *Must a local governmental unit adopt an ethics ordinance and establish its own ethics board? How are ethics laws enforced?* Having a local ethics ordinance and establishing a local ethics board are optional. A local unit might wish to have its own ordinance to fill in some gaps in the law and have local enforcement. Sec. 19.59(1m)-(3). (If an ordinance is established, the ordinance is enforced by the unit’s attorney rather than by the district attorney.) Similarly, a unit might wish to establish an ethics board to provide guidance on ethics matters. Sec. 19.59(3)(d). Neither is required. However, the Code of Ethics for Local Government Officials, in subch. III of ch. 19, *Wis. Stats.*, applies to all “local public officials” (as defined). Enforcement of this state law is by the district attorney, as is enforcement of the law concerning private interests in public contracts (##18-20, below). Civil remedies, including forfeitures and injunctions, and criminal penalties may apply. Secs. 19.58 and 19.59(7)-(8).

Gifts, Food & Drink, Conferences, Political Contributions, etc.

12. *May I accept gifts? What limits exist regarding the acceptance of gifts?* You may not accept a gift given to you because you are a public official, unless it is of insubstantial value. This means that you may, of course, receive gifts from friends and relatives who make the gifts for personal reasons, unrelated to seeking your favor as a public official. As a public official, it is best to politely refuse gifts and explain the policy in not accepting them. If the item cannot be returned to the donor the Wisconsin Ethics Division suggests turning the item over to the governmental unit, another public institution, or a charitable organization (other than one with which you or an immediate family member are associated). See Eth 235 (Disposition and reporting of gifts.) Gifts with an insubstantial value may be accepted, although it is always safest not to. So a small desk calendar or inexpensive pen with a logo, for example, may be accepted. The statutes do not define the terms “insubstantial value” or “substantial value.” Your local unit may do so by ordinance.

13. *What about accepting a meal from a contractor who does business with our local unit?* You should not accept such free meals. If the meal is for public business, you should pay for it yourself and seek reimbursement from your local governmental unit, preferably subject to pre-established guidelines on expense reimbursement.

14. *How about accepting refreshments and entertainment at a conference?* If you are attending the conference in your capacity as a local government official, you may accept such items if they are part of the conference and approved by the conference sponsor. So if you attend, say, the annual conference given by your statewide local government association you may certainly accept free refreshments supplied by vendors at the conference and attend entertainment provided at the conference. However, it is not proper to accept refreshments or entertainment or gifts at hospitality suites that are offered to you as a local official but are not an approved part of the conference.

15. *Are there limits on accepting transportation and services?* Yes, the Code of Ethics prohibits receiving services, of more than nominal value, that are offered to you because of your public office. Also, you may not, under a felony statute, accept free or discounted transportation, traveling accommodation or communication services for which the supplier would normally charge. Sec. 946.11, *Wis. Stats.*

16. *Do considerations of public benefit outweigh those of private benefit in some cases?* Perhaps, but be careful. When you get reimbursement for a meal during which you were on public business, you obviously received a private benefit, but your local governmental unit has decided that it is a legitimate expense—that the public benefit predominates. However, if the expense were paid by a third party, such as a potential contractor, for something which provided a private benefit, then the question would arise of whether the benefit was intended to influence your judgment. For this reason, it’s better for local officials to pay their own way and seek reimbursement from their local unit.

There may be some cases, though, where the cost is high and is incurred primarily for a public benefit. For example, if an official travels to see an expensive piece of equipment or a facility and incurs airplane, lodging, meal and entertainment costs, it seems that the local unit

might legitimately accept payment from the prospective vendor for the travel and lodging expenses. While this may be justified in some cases, it nevertheless seems better for the local unit to cover its officials' reasonable costs and seek savings from the vendor instead in the cost of the equipment being sold. Regarding the meal and entertainment expenses incurred in such a trip, the safest course is for these expenses to be paid by the official, subject to reimbursement under the local unit's guidelines.

17. What is the recent “pay-to-play” prohibition in the Code of Ethics for Local Officials?

No “local public official” or “candidate for local public office” may, directly or by an agent, use his/her office or influence regarding a proposed or pending matter in exchange for another person providing or refraining from providing a political contribution or providing or refraining from providing any service or other thing of value for the benefit of a “candidate,” a political party, any other person who must register under the campaign finance law, or to any person who makes a “communication” that refers to a “clearly identified” local public official holding an elective office or to a candidate for such office. Sec. 19.59(1)(br, *Wis. Stats.* (The terms in quotes are defined in sec. 19.42.) The pay-to-play prohibitions are enforced by a district attorney (or the attorney general) and violators are subject to forfeitures, court orders and criminal penalties. Secs. 19.58 and 19.59(7)-(8). However, a complaint alleging a violation of the law may not be brought within a specified period prior to the election for the local office.

Note that it is not a violation of the provision prohibiting a local official from using his/her office to obtain private gain, sec. 19.59(1)(a), when the official uses “the title or prestige of his or her office to obtain campaign contributions that are permitted and reported” under the campaign finance law. Sec. 19.59(1)(a).

Contracts

18. May I contract with my local unit to sell goods or equipment or land? Yes, subject to limits. Of course, you may not, under the Code of Ethics, vote to award yourself the contract or act in any official capacity regarding the contract, such as performing inspections or authorizing payments. This same prohibition on *official* action in regard to a contract is also found in a felony statute, sec. 946.13(1)(b), *Wis. Stats.* In general, as long as you abstain from all official involvement, you do not violate the law, except as follows.

You must keep in mind that the felony statute, sec. 946.13(1)(a), prohibits a public officer or employee from acting in a *private* capacity to negotiate, bid or enter into a contract where the officer is *authorized* or required by law to participate in an official capacity in making the contract or exercising discretion under the contract, unless an exception applies. This means that it is possible to abstain and still violate the law—you may have to choose between doing business with your unit and keeping your public office or job. The most commonly used exception is the one that allows a public officer or employee to avoid violating the law by abstaining completely from official action when he or she has a direct or indirect financial interest in contracts with the local unit as long as the total receipts or disbursements under the contracts in which the individual has an interest do not exceed \$15,000 in a calendar year. (*Note:* Your salary as a public official is not counted in figuring the \$15,000 limit.) If the contracts in which you have an interest exceed (or would exceed) that amount in a year, you may have committed a felony, even if you abstained, by, in your private capacity, negotiating, bidding or entering into the contract. Furthermore, you can violate the felony statute merely by bidding on

the contract, even if you do not receive it. Finally, note that it is the annual total of the payments under the contracts that is subject to the \$15,000 ceiling and triggers a violation, rather than your personal financial interest (e.g., a commission), which may be less than \$15,000.

Note: Violation of sec. 946.13 is a serious matter, a Class I felony, which means that it is punishable by a fine not to exceed \$10,000, 3 ½ years in prison, or both. Violations are prosecuted by the district attorney, and the law provides that a contract entered into in violation of the statute is void.

19. *May I provide services on contract with my local unit?* Yes, the above considerations apply when you are an independent contractor. An independent contractor is one who provides his/her own tools and equipment in performing the job and exercises responsibility over how the work is done. This is in contrast to a part-time employee (see ##22 & 23 below). If you are an independent contractor, you must abstain from any involvement in your official capacity in approving or administering the contract. By abstaining, you are protected unless the contracts in which you have an interest exceed the \$15,000 amount for the receipts and disbursements in a year (see #18, above).

20. *What about contracts involving my immediate family, an organization that I am associated with or my employer?* As with the above examples concerning contracts in which you have a personal interest (##18 and 19), the Code of Ethics prohibits you from voting or acting in an official capacity in a contract involving your immediate family or an organization with which you are associated, subject to the definitions in that Code. However, because the definitions do not cover many situations, the Code may not apply. For example, you could vote to award a contract to your brother, because he would not be an “immediate family” member as that term is defined. (See item #10). This illustrates that even though a matter may not be prohibited by the Code of Ethics, other statutes or your ordinance, *you may nevertheless decide to abstain based on appearances*. Exercise great caution, however, regarding the \$15,000 ceiling on total annual contract payments if you may be deemed to have a direct or indirect personal financial interest in the contracts (see ##18, above).

In addition, under the definitions in the Code of Ethics, although you are not “associated” with your employer merely by being an employee, because of your personal interest in employment, you must abstain from voting on contracts involving your employer.

Compatibility Issues: Conflicts in Holding More Than One Local Office or Position & in Job Creation & Selection

21. *As a local official, may I serve in other local offices?* The general rule is that the same person cannot hold two public offices, or an office and a position (see ##22 & 23, below), where one post is superior to another, or where, from a public policy perspective, it is improper for the same person to hold both. *Otradovec v. City of Green Bay*, 118 Wis.2d 293 (Ct. App. 1984). Therefore, a local governing body member cannot hold two local offices within the same unit of government, unless there is specific authorization. (A county officer is specifically prohibited from being on the county board by sec. 59.10(4), as mentioned in the following item.) For example, town, village, city and county governing body members may generally serve on local boards and commissions. Secs. 59.10(4)(counties) & 66.0501(2)(cities, villages & towns), *Wis. Stats.* Also, specific statutes allow governing body members to serve on various boards and

commissions, as is the case with town, village and city governing body members serving on the board of review and the plan commission. Secs. 70.46(1) & 62.23(1).

With regard to serving in offices for two different units, it is necessary to look at the particular offices involved to see if there is a conflict. Specific statutes may apply. For example, a county board supervisor may also serve as a town, village or city governing body member. Sec. 59.10(4). Also, the office of county board supervisor may be consolidated under a village or city charter ordinance with the office of village president or alderperson, if the boundaries of the county supervisory district are the same as those of the village or the aldermanic district. Sec. 66.0503.

What about officers other than governing body members? Again, it's necessary to look at specific situations. Generally, there are fewer conflicts when non-governing body officers are involved. Also, the statutes may cover various situations. For example, town officers are generally prohibited from receiving payment for acting in more than one town office at the same time. Sec. 60.323. However, certain local offices may be combined: e.g., the offices of town clerk-treasurer and town clerk-assessor are allowed. Sec. 60.305. Similarly, city and village offices, other than governing body offices, may generally be combined by charter ordinance. Secs. 61.195 & 62.09(3)(c).

22. As a governing body member, may I work as an employee for the local unit? No, not unless there is specific statutory authorization, such as the one recently created for town officers (see #23, below). In general, as mentioned above, under the case law on compatibility of offices and positions, a governing body member cannot also be an employee of his/her local unit. The case establishing this prohibition, *Otradovec* (above at #21), ruled that an appraiser in the city assessor's office could not also serve on the city common council.

A specific compatibility provision for counties provides that no county officer or employee may be a county board supervisor. Sec. 59.10(4), *Wis. Stats.* However, an elected or appointed county official may serve as the administrative coordinator in a county without a county executive or county administrator. Sec. 59.19.

For cities, villages and towns, the statutory law creates an exception to the general compatibility doctrine. It allows a city, village or town elected official to serve as a **volunteer fire fighter, emergency medical technician or first responder** for his or her local unit, as long as the annual compensation, including fringe benefits, does not exceed \$15,000 for the public safety position. (The limit was raised by the 2001 budget act, 2001 Wisconsin Act 16, from \$2,500 to \$15,000.) Sec. 66.0501.

A recent enactment addresses the question of the eligibility of county, city, village and town employees to run for elective office. Sec. 66.0501(5), created by 2003 Wisconsin Act 79. These employees may generally run for elective public office, and they may not be required to take a leave of absence during their candidacy, although the new provision does not affect the authority of a public employer to regulate the conduct of a public employee while acting in an official capacity. Public employees who wish to run for elective office should determine whether an incompatibility would exist if they were elected. It should be noted, however, as explained in the Wisconsin Legislative Council Act Memo on Act 79, that the new law does not apply to an individual if the federal Hatch Act applies. That federal act generally prohibits federally funded state and local officers from running for elective office unless they take a leave of absence.

23. As an elected town officer, may I do part-time work such as keeping roadways clear and plowing snow? Yes, subject to limits. The 2001 budget act created an exception to the compatibility doctrine for elected town officers, in addition to the above exception (#22) for the specified public safety positions. Sec. 66.0501(4), *Wis. Stats.*

This recent language provides that it is compatible for an elected town officer to receive wages for work he or she performs for the town as a part-time employee. Sec. 66.0501(4). An elected town officer who also serves as a part-time town employee may receive an hourly wage not exceeding a total of \$5,000 per year. Sec. 60.37(4). (For elected town officers who are a clerk, treasurer or clerk-treasurer this \$5,000 figure was raised to \$15,000 by 2007 Wisconsin Act 20). These wages are *in addition* to the amounts that may be received in the above public safety positions (#22) and for the person's elected office. However, the \$5,000 maximum *includes* amounts paid to a town board supervisor acting as superintendent of highways under sec. 82.03(1).

The town meeting of electors sets the hourly wage for an elected town officer serving as a town employee. Sec. 60.10(1)(g). The town meeting may delegate to the town board the authority to set this wage, except that the town meeting cannot delegate the authority to set the wage for a town board supervisor serving as a town employee. Sec. 60.10(2)(L).

Note: Even though a town officer may receive wages as a town employee, the town officer, under the Code of Ethics for Local Officials (#9, above), may not use his/her official capacity for his/her own financial gain, and would therefore have to abstain from official involvement as a town officer in this hiring decision and should likewise abstain from approving payment to himself or herself for such work. Also, remember that being a part-time employee is different from being an independent contractor; for the latter abstention and the \$15,000 limit on contracts apply, as discussed in ##18-20, above.

24. As a governing body member, may I take another office or a job with my local unit? What if I resign from the governing body? The answer depends upon the circumstances. First, as discussed in items ##21-23, the law of compatibility prohibits a governing body member from holding another office or position with the unit, unless a statutory exception applies. A specific statute addresses the eligibility of governing body members for election or appointment to offices and positions. Sec. 66.0501(2), *Wis. Stats.* This statute provides generally that no member of a city council or of a town, village or county board may, during the term for which the member is elected, be eligible for an office or position created during the term by the governing body or for an existing office or position where the selection is vested in the governing body.

This general prohibition, however, is subject to exceptions. It does not apply to being eligible for an elected office, or if a statute provides an exception. Also, the statute provides that the prohibition on a governing body member taking an *existing* office or job, where selection is vested in the governing body, does not apply if the member *resigns* prior to appointment. If the job or office was created during your term on the governing body, you may not resign and take the office or position during your current term of office, unless there is specific statutory authorization to do so. Sec. 66.0501(2). Of course, you could be elected to office. For example, you may as a governing body member run for and be elected to the newly created or existing office of municipal judge. However, taking the office of municipal judge would, under the compatibility of offices doctrine, #21 above, create a vacancy in your office on the governing body.

If the job or office is new and appointed, you would have to wait until after your current term has expired, and you are no longer on the governing body, to take the job or office (unless a statutory exception applies). The position of administrator serves as a good example. If you serve on a city, village or town governing body and that body creates the position of administrator, you could not resign and be appointed to fill that new post during your current term. However, if the position of administrator was in existence prior to your term of office, you could resign from the governing body and then be appointed to the position.

In contrast to the prohibition on appointment as administrator of a sitting city, village or town governing body member, it appears that a sitting county board member may be eligible for appointment as county administrator. The law provides that, "If any member of the (county) board is appointed as county administrator, his or her status as a board member is thereby terminated," except in the case of filling a vacancy in the position of administrator for up to 15 days. Sec. 59.18(1). If this situation arises, it is advisable to seek the opinion of corporate counsel on the interplay of the prohibitions in sec. 66.0501(2) and the applicability of the apparent exception in sec. 59.18(1).

The question may also arise as to whether the general prohibition in sec. 66.0501(2) prevents a governing body member from serving in one of the designated part-time public safety positions (#22, above) or prevents a town board supervisor from working on a part-time town job (#23, above) if the position was created during the governing body member's current term of office, or the selection is vested with the governing body. It appears that these provisions allowing elected officials to hold certain part-time positions (##22 & 23) are intended as exceptions to the general prohibition on governing body members taking jobs created during their current term of office or where selection is vested in the governing body.

Finally, it should be emphasized that you, as a governing body member, must not use the power of your office to obtain a new position, or to obtain financial gain for yourself. This could violate the Code of Ethics for Local Officials (sec. 19.59, #9 above) and could constitute misconduct in office (sec. 946.12)(#25j below). In addition, the felony statute prohibiting private interests in public contracts (##18-20) could also be involved if you, as a governing body member, submitted a job application for a job with a yearly payment over \$15,000 (unless a statutory exception applies).

Other Provisions

25. *What other ethics provisions are in the Wisconsin Statutes?* This FAQs paper has primarily covered the Code of Ethics for Local Officials, found in subch. III of ch. 19, *Wis. Stats.*, and the related criminal provision on public interests in private contracts, sec. 946.13. These are the most commonly-referenced Wisconsin statutory provisions. However, there are a number of other provisions relating to ethics and conflicts of interest in the law. Some of them, such as the prohibition on certain sales to local employees, are very narrow. Following is a listing of Wisconsin ethics and conflicts-of-interest provisions, including the statutes covered in this paper (which are indicated by an asterisk). (For information on how to access the statutes, see #3 above.)

a. Bribery. Secs. 12.11 and 946.10. The scope of prohibitions covered by sec. 12.11 includes promising an official appointment or anything of value to secure votes. Section 946.10 prohibits public officials from taking bribes.

b. Discounts at certain stadiums. Sec. 19.451. Local officials may not accept discounts on prices charged to the general public for parking and seating at the stadiums of professional teams that are exempt from the property tax under sec. 70.11(36).

*c. *Code of Ethics for Local Officials (## 9-11).* Secs. 19.42, 19.58 and 19.59. These statutes provide ethical standards for local officials, and authorize a local ethics ordinance and establishment of a local ethics board.

*d. *Eligibility for office (##21-24).* Sec. 66.0501. This provision addresses limits on a local officer holding or taking another local office or position.

e. Compensation of governing body members. Sec. 66.0505 (formerly sec. 66.196). County, city, village and town governing body members may not give themselves mid-term salary increases. A new sub. (3), created by 2007 Wisconsin Act 49, creates a procedure for an elected official to refuse his or her salary. Salary and benefit changes are also covered by various specific provisions in the county, city, village, town and municipal law chapters of the statutes.

f. Fraud by board of review member. Sec. 70.502. Such member may not intentionally violate the law or fail to perform duties.

g. Sales to liquor (and wine) licensees or applicants. Sec. 125.51(1)(b). A member of a municipal governing body may not sell or offer to sell a bond, material or product to be used in the licensee's business.

h. Sales to local employees. Sec. 175.10. Local units of government, governing body members and purchasing agents in general may not sell things to their own employees. The prohibition does not cover meals, public services and items required for the safety or health of employees. The prohibition also does not apply to recreational, health, welfare, relief, safety or educational activities furnished by the governmental unit.

*i. *Special privilege (travel, transportation, utilities)(#15).* Sec. 946.11; Art. 13, sec. 11, *Wis. Const.* Public officers may not be given, or receive, free or discounted traveling accommodation, transportation for persons or property, or transmission of messages or communications not available to the general public.

j. Misconduct in office. Sec. 946.12. A public official or employee may not intentionally: fail to do a mandatory, nondiscretionary, ministerial duty; act in excess of his or her authority; abuse his or her discretion with the intent to obtain a dishonest advantage for the officer, employee or another; falsify records; or under- or over-value any duty or service whose cost is fixed by law.

*k. *Private interests in public contracts (##18-20).* Sec. 946.13. This statute places limits or prohibits local officials and employees with authority over contracts from bidding or entering into such contracts (subject to exceptions).

l. Purchasing claims at less than full value. Sec. 946.14. Public officers and employees may not, in their private capacity, intentionally purchase for less than full value any claim against the state or a political subdivision of the state.

m. Public construction contracts at less than full value. Sec. 946.15. Compensation due to persons employed under these contracts may not be given up, waived, returned or reduced.