

NOTICE OF PROPOSED GUIDANCE DOCUMENT

ETHICS GUIDELINE ETH-1232

Pursuant to s. 227.112, Wis. Stats., the Wisconsin Ethics Commission is hereby seeking comment on ETH-1232, a proposed guidance document. This guideline consolidates and replaces two earlier guidelines, ETH-1232 and ETH-1240.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Ethics Commission until June 3, 2019, by:

1. Emailing ethics@wi.gov, or
2. Mailing written comments to:
P.O. Box 7125
Madison, WI 53707-7125

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at <https://ethics.wi.gov/Pages/Resources/ResourcesOverview.aspx> to allow for ongoing comment.

AGENCY CONTACT PERSON

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Wisconsin Ethics Commission

For State and Local Public Officials

Mitigating Conflicting Interests: Private Interest Vs. Public Responsibility

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature. Standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material. State public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments. [WIS. STAT. § 19.45\(1\)](#).

ACTING IN AN OFFICIAL CAPACITY

MAKING POLICY. When a public official or a board, commission, or other body of which an official is a member is called upon to propose or to act on legislation, to promulgate a rule, or to issue a general policy, the official may participate in that action even though the action will affect the official, a member of the official's immediate family, or an organization with which the official is associated¹, as long as:

- The official's action affects a whole class of similarly situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated¹ is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official, of a member of the official's immediate family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

See e.g., [2008 GAB 02](#); [11 Op. Eth Bd 9 \(1989\)](#); [8 Op. Eth Bd 33 \(1985\)](#); [5 Op. Eth Bd 89, 65, 59](#); [4 Op. Eth Bd 104 \(1981\)](#).

APPLYING POLICY. A public official should not, in an official capacity, participate in or perform any discretionary action with respect to the making, grant, or imposition of an award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official or a member of the official's immediate family or a business or organization with which the official is associated has a substantial financial interest, direct or indirect. WIS. STAT. §§ [19.45\(2\)](#), [19.46\(1\)](#), [19.59\(1\)\(a\)](#) and [\(c\)](#). In addition, a public official should not, in an official capacity, participate in a matter affecting a business or organization from which the official or a member of the official's immediate family receives substantial compensation or income. See WIS. STAT. §§ [19.45\(3\)](#), [19.59\(1\)\(b\)](#); [2013 GAB 01](#), [1994 Wis Eth Bd 5](#).

¹ "Associated" included any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent. [WIS. STAT. § 19.42\(2\)](#).

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which a public official should not participate comes before the legislature, a board, commission, or other body of which the official is a member, the official should refrain from discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect that the member has withdrawn. The body's remaining members may review the matter and take whatever action they find appropriate. [1992 Wis Eth Bd 22](#).

ACTING IN A PRIVATE CAPACITY

APPLICATIONS, BIDS, AND CONTRACTS. Usually, a public official should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, grant, contract, offer of employment, or agreement in which the official has a private financial interest, direct or indirect, if the official is *authorized* to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf. [WIS. STAT. § 946.13](#)

REPRESENTING CLIENTS. A public official should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board, commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation. WIS. STAT. §§ [19.45\(3\)](#), [19.45\(7\)](#), [19.59\(1\)\(b\)](#).



Wisconsin Ethics Commission

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CERTIFICATION OF AGENCY HEAD

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink, appearing to read "D. Carlton, Jr." with a stylized flourish at the end.

Daniel Carlton, Jr.
Commission Administrator
Wisconsin Ethics Commission

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.