

# THE WINNEBAGO COUNTY BOARD OF SUPERVISORS ETHICS HANDBOOK

## Purpose

The purpose of this Handbook is to provide members of the Winnebago County Board of Supervisors with an easy to read, simple Handbook which provides an explanation of State Ethics Laws and Winnebago County Ordinances and Policies which apply to members of the Winnebago County Board of Supervisors. Given the purpose of this Handbook, members of the Board of Supervisors are urged to consult with the Corporation Counsel, and if necessary to obtain a written opinion from that Office, with regard to any situations relating to the ethics of their conduct.

## Why Are There Ethics Laws and Ordinances?

There are three general reasons for the creation of ethics laws and ordinances. These are:

- a. To strengthen citizens' confidence in the integrity of governmental officials.
- b. To help preserve the integrity of the government-decision making process.
- c. A policy that officials should not profit from holding public office.

## Pertinent Statutes, Ordinances and Policies

- A. Criminal Statutes.
  1. Section 946.10, Wisconsin Statutes (Bribery of Public Officials and Employees)
  2. Section 946.11, Wisconsin Statutes (Special Privileges from Public Utilities)
  3. Section 946.12, Wisconsin Statutes (Misconduct in Public Office)
  4. Section 946.13, Wisconsin Statutes (Private Interest in Public Contract Prohibited)
  5. Section 946.14, Wisconsin Statutes (Purchasing Claims of Less Than Full Value)

**B**                    **Relevant Civil Statutes**

1.     Section 19.59, Wisconsin Statutes (Codes of Ethics for Local Government Officials, Employees and Candidates)

**C.**                    **Ordinance Provisions**

1.     Section 1.01, General Code of Winnebago County (Receipt of Gifts and Gratuities)

**D.**                    **Relevant Personnel Policy Provisions**

1.     Section 4 – Conflict of Interest
2.     Section 5 – Employment Discrimination and Sexual Harassment

**Criminal Statutes**

Criminal statutes are statutes which make it a state crime to engage in certain conduct. Crimes that are felonies have the possible consequence of imprisonment for one year or more in a state penitentiary such as Waupun or Taycheedah. The conviction of a felony also results in the loss of certain rights, such as the right to vote, the right to run for or hold public office, and the right to own or possess a firearm.

The conviction of a misdemeanor has as a consequence of possible imprisonment for less than one year in the County Jail. A conviction on a misdemeanor charge, like conviction on a felony charge, results in a person having a permanent criminal record. Misdemeanors, however, being less serious crimes, do not result in the person convicted losing the same personal rights that would be lost if the person had been convicted of a felony.

**Crimes Relating to Public Officers**1.     **Bribery**

Pursuant to Section 946.10, Wisconsin Statutes, accepting a bribe by a public officer or employee is a Class D Felony. That Statute states that “Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer’s or employee’s lawful duty” is guilty of a Class D Felony.

Example: A County Board member who is on the Zoning Committee agrees on behalf of a developer, who is petitioning the Zoning Committee for approval of a zoning amendment, to vote in favor of the developer's petition for amendment so as to allow the development of a residential subdivision. In return, the developer offers to provide the supervisor with a discounted price upon a choice lot within the subdivision. The County Board Supervisor, in accepting this offer, has accepted a bribe.

## 2. Special Privileges From Public Utilities – Class E Felony

Under Section 946.11(b) and (d), Statutes, any public officer who asks for or accepts from any person or uses in any manner for any purpose any free pass or frank or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication or who asks for and accepts or uses in any manner or any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility is guilty of a Class E Felony.

Example: The County Board Chairman asks Ameritech to provide him with free telephone service to his home. Even though Ameritech refuses to provide free service to the County Board Chairman, the County Board Chairman, by asking for this privilege, is guilty of a Class E Felony.

## 3. Misconduct In Public Office – Class E Felony

Section 946.12, Statutes states that any public officer or public employee that does any of the following is guilty of a Class E Felony:

- a. 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;
- b. In the officer's or employee's capacity that 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;
- c. 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 of employment or the rights of others and with an intent to obtain a dishonest advantage for the officer or employee or another;

- d. In the officer's or employee's capacity as such officer or employee makes an entry into an account or record book or return certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or
- e. Under color of the officer's or employee's office of 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.

Example as to (a) above:

Section 59.11(3), Wisconsin Statutes, provides that, "All (board) meetings shall be held in the county at places that are designated by the board. The board shall give adequate public notice of the time, place and purpose of each meeting." Thirty members of the board travel together to a NACO Conference in Texas and decide to convene the meeting of the County Board of Supervisors without notice to the press or general public. All county board members participating in such a meeting would be guilty of a Class E Felony in that the statute mandates that all meetings of the board must be held within Winnebago County and that adequate notice of the time, place and purpose of each meeting must be provided by the board.

Example as to (b) above:

The County Board Chairman enters a car dealership and signs a contract for a new 4-wheel drive pick-up truck to be purchased on behalf of the Land and Water Conservation Department, despite the fact that the County Board Chairman has no authority to sign such a contract nor has money been appropriated for the purchase of such a vehicle. As a result, the County Board Chairman is guilty of a Class E Felony.

Example as to (c) above:

A county board member, who is also an attorney, represents a client who has a claim against the County. The county board member votes to grant his client's claim, knowing that he has an agreement with his client to receive as a fee of 25% of whatever his client recovers. The county board supervisor is guilty of a Class E Felony in this instance.

Example as to (d) above:

A county board supervisor travels to Madison for a county sponsored seminar. Despite the fact that mileage from the supervisor's home in Oshkosh to Madison is 170 miles round trip, the supervisor claims mileage of 240 miles. This is an intentional

falsification of the county board supervisor's mileage and thus he is guilty of a Class E Felony.

Example as to (e) above:

The Chairman of the Zoning Committee informs a person petitioning for a zoning amendment that the person will have to pay a \$500 "late fee" to have the petition considered at the next Zoning Committee meeting, despite the fact that the county has no such fee requirement. Despite the fact that the petitioner's check is made out to the county, the committee chairman is guilty of a Class E Felony in that he has solicited a fee which is greater than is fixed by law for the performance of a duty.

#### 4. 946.13 Private Interest In Public Contract Prohibited – Class E Felony

Section 946.13 provides that a public officer or public employee that does any of the following is guilty of a Class E Felony:

In their 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 their official capacity in the making of the contract or to perform in regard to this contract some official function requiring the exercise of discretion on the officer or employee's part or, in their capacity as an 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. This section of the statute does not apply to a contract in which any single public officer or employee is privately interested but do not involve receipts or disbursements aggregating more than \$15,000 in any year; contracts involving the deposit of public funds in public depositories; contracts involving loans made to the county; contracts for the publication of legal notices required to be published; contracts for the issuance to a public officer or employee of tax titles, certificates or instruments which are issued in lieu of payment of salary or other obligations due to such an employee; and contracts for the sale of bonds or securities issued by the county or contracts for the payment of wildlife damage, farmland preservation, water resources management or water pollution abatement. This section also does not apply to any officer or employee who receives \$10,000 or less per year in compensation by reason of that officer or employee being a director, officer, employee, agent or attorney for a state or national bank. In addition, there are various other exceptions to the law which may apply in a number of very limited, specified cases.

**Comment:** Of all the areas of the criminal law, this is the area that a county board supervisor may most easily violate, either inadvertently or as a result of the somewhat vague nature of the statute. A prosecutor does not have to prove intent to violate the statute to obtain a conviction. Moreover, compliance with this statute does

not necessarily guarantee compliance with the State Ethics Law or the County's Ethics Ordinance. The following are a few simple examples with regard to the applicability of the law:

Example #1: A county board supervisor operates a business for the repair of copying machines and other similar office equipment. The Corporation Counsel's Office calls the business and asks the supervisor to make an emergency repair of his copying machine. The county board supervisor performs this service and sends a bill to the County for \$1500.00 for the repair. The county board supervisor is not guilty of a Class E Felony in this case in that the aggregate amount of the contract was less than \$15,000 per year.

Example #2: During the course of the year, the same county board supervisor as in Example #1, above, repairs copying machines in 20 different offices for the county. Moreover, the county board supervisor, as a member of the Personnel & Finance Committee, has voted in favor of separate appropriations of \$1,000 each for each department for copying machine repairs. The aggregate bill for these services is \$20,000. In this example, the county board supervisor is in violation of the statute and guilty of a Class C Felony in that he has participated in the making of the contract and appropriation of the money for the contract and performed services for the county in an aggregate amount greater than \$15,000 during that calendar year.

#### 5. Section 946.14 – Purchasing Claims of Less Than Full Value

This statute prohibits an official from purchasing a claim against the County for less than full value.

Example: Tom's wife was killed in an accident with a County Highway truck. Tom files a survivor's claim against the County for \$1 million. A county board supervisor purchases Tom's claim against the County from him for \$10,000, hoping to sue and recover a greater amount from the County. The supervisor's actions constitute a Class E Felony.

### Civil Laws

-19.59 Codes of Ethics for Local Government Officials, Employees and Candidates.

Section 19.59(1)(a): No local public official may use 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 the official is associated.

### **Who is a Public Official?**

Pursuant to Section 19.42(7w), Statutes, elected county officials, individuals appointed or contracted with to serve or be employed by the county for a specified term; and persons appointed to their positions (department heads) who serve at the pleasure of the County Board or County Executive are public officials.

### **What is “Anything of Substantial Value?”**

In a 1977 Opinion, the State Ethics Board, interpreting the Ethics Code applicable to state officials, considered the legality of a state official’s acceptance of a \$25 gift. In that Opinion, the State Ethics Board stated: “We did not mean to suggest it is improper for a state official to accept something that is a mere token of appreciation, but we wish to distinguish between mere tokens of appreciation and items of merchantable value. Applying this test, we believe that a gift having a value of \$25.00 or more is an item of value of which should rebound to the state if offered to a state official in appreciation of official fulfillment of tasks related to his or her public responsibilities. Pens and pins, on the other hand, may be mere tokens ... .”

It is important to realize what the Ethics Board is saying in its opinion. Its ruling says: 1) Any gift over \$25 violates the law;. 2) A gift under \$25 could violate the law; and 3) Acceptance of promotional trinkets does not violate the law.

However, in another Ethics Opinion, the Ethics Board stated, “We think it is inappropriate for any state officer or employee to accept anything more than nominal value from any business desiring to enter into an agreement with the State of Wisconsin if the official or employee will exercise any influence with respect to the proposed agreement. Nevertheless, the Legislature has noted that standards for elected and for state public officials need to distinguish between those minor and inconsequential conflicts therein avoidable in a free society and those conflicts which are substantial and material. Under ordinary circumstances, therefore, we believe that an officer or an employee of the State of Wisconsin may partake of refreshments offered by a distributor of office equipment insofar as the value of the refreshments is clearly nominal and the circumstances are conducive to review and discussion of the equipment marketed.”

### **What is Private Benefit?**

Anything obtained through the use of an official’s public position or office only violates the law if the item benefits the official or his or her immediate family on a private basis.

Example: The county board supervisor is also a town board supervisor. He uses his position as a county board supervisor to obtain a grant for the town in the amount of \$100,000. In that the county board supervisor’s actions do not result in a private benefit

to the county board supervisor or his or her immediate family, there is no violation of the law.

Example: A county board supervisors attends the Wisconsin Counties Association Convention. There is an exhibition hall at the convention where many private businesses have purchased booths as exhibitors. In order to gain admission to the exhibition hall, a person must be an exhibitor, an elected county official, a county employee, an employee of the Wisconsin Counties Association or must have some type of connection with county government. A general contractor has an exhibit booth in the hall. The contractor has posted a sign indicating that two Packer tickets will be awarded to the winner of a drawing. Persons visiting the exhibit can enter the drawing by putting their name in a fish bowl at the contractor's booth. A county board supervisor places his name in the fish bowl and subsequently wins the two Packer tickets. In the opinion of the State Ethics Board, it would be a violation of the law for the county board supervisor to accept the tickets for himself. This is because he is using his official public position for the benefit of himself or his immediate family on a private basis. This is because the supervisor would not have been eligible to enter the exhibit hall and enter the drawing but for his public position as a supervisor. The supervisor may only accept the tickets if the tickets are given to the county government. Absent any county policy to the contrary, the tickets would be required to be turned over to the office of County Executive, who, as Chief Administrative Officer for the County, would determine the means of their disposition.

Example: A county board supervisor attends the Wisconsin Counties Association convention. The county board supervisor, while at the convention, goes out to dinner at a local restaurant. In the lobby of the restaurant, the restaurant owner has placed a box with entry forms to enter a contest to win two free Packer tickets. The county board supervisor enters the drawing and subsequently wins the two free Packer tickets. In this instance, it would not be illegal for the county board supervisor to accept the tickets. This is because anybody entering the restaurant, regardless of their status, could enter the drawing. It was not necessary to be a county board supervisor or connected with county government to enter the restaurant or to enter the contest. Thus, the county board supervisor has not used his public position to benefit himself or his immediate family on a private basis.

### **What is "Immediate Family?"**

Pursuant to Section 19.42(7), Statutes, the immediate family of a public official includes that individual's spouse, and any individual who is related by marriage, lineal descent or adoption who receives directly or indirectly more than ½ of his or her support from the public official or from whom the public official receives directly or indirectly more than ½ of his or her support. Consequently, spouses and minor children of public officials fall within the definition of immediate family. An adult son, daughter, niece, nephew, parent or grandparent who is supported and who receives more than 50% support from the public official is also "immediate family". Conversely, if the public official receives more than 50% of his support from his parents, children, grandparents,

or uncle or an aunt, those relatives from whom the public officials receives such support fall within the definition of “immediate family”.

On the other hand, an adult son or daughter of a public official does not fall within the definition of “immediate family” nor does any other adult relative of the official provided that the son, daughter or other relative who receives less than 50% of their support from the public official or, conversely, if the public official receives less than 50% of his support from the son, daughter or other relative.

Example: A county board supervisor votes to approve a collective bargaining agreement with staff at the county-owned nursing home. The county board supervisor’s daughter works as a nurse’s aide at the nursing home and is covered under the collective bargaining agreement. The county board supervisor does not financially support his daughter nor does the daughter financially support the county board supervisor. The county board supervisor, by voting in favor of the collective bargaining agreement, does not violate state statute.

Example: The wife of a county board supervisor works as a nurse for the County Health Department. The annual budget resolution comes before the County Board for a vote. The county board supervisor may vote upon the budget resolution, in that the resolution does not specifically focus on the County Health Department and the County Health Department’s appropriation is but a small part of the budget. However, the county board supervisor would be prohibited from voting upon an amendment to the budget which might affect the salary, benefits or the employment position of his wife, in that it may be presumed that the supervisor was utilizing his position to benefit his immediate family on a private basis.

### **What Is “Organization With Which the Official is Associated”?**

An organization, as defined in Section 19.42(11), Statutes, means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic. “Associated”, as defined by Section 19.42, Statutes, when used with reference to an organization, includes any organization in which an individual or 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 immediately family is an authorized representative or agent.

Example: A county board supervisor is a member of the zoning committee. A petition for zoning amendment comes before the zoning committee from the Kimberly Clark Corporation. Five years previously, the county board supervisor inherited 1,000 shares of Kimberly Clark common stock. (For purposes of this example, approximately 30 million shares of Kimberly Clark common stock are outstanding). The county board supervisor is not a director, officer or trustee of Kimberly Clark Corporation. It is not a violation of Section 19.59(1)(a), Statutes, for the county board supervisor to participate and vote upon the petition for zoning amendment.

Example: The same situation as the previous example, except in this case, the county board supervisor owns 100 shares of Kimberly Clark stock, but serves as a trustee for a private foundation, which controls 15% of the common stock of Kimberly Clark Corporation. In this example, the county board supervisor would be prohibited from voting upon the petition for zoning amendment.

Example: Friends of a county board supervisor form a small computer business. They have incorporated the computer business and issued 100 shares of stock. They have placed the county board supervisor on the board of directors and given him one share of stock of the corporation. A resolution comes before the county board to approve a three year contract for computer services with that corporation. The county board supervisor, as a director of the corporation, is prohibited from participating in or voting upon the resolution, despite the fact that he owns only one share of stock in the corporation, in that he is a director of the corporation.

### **Conflicting Interests - 19.59(1)(c)**

No local public official may take any official actions 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.

The statute does not apply to any action taken by a county board supervisor with regard to a resolution to modify or amend a county ordinance.

Example: A resolution comes before the county board whereby the Nature Conservancy will purchase property from Winnebago County. The county board supervisor is a member of the Nature Conservancy, (a national charitable wildlife preservation organization). It would not be illegal for the county board member to vote upon the resolution in that he is not “associated” with the Nature Conservancy pursuant to Section 19.42(2), Statutes, as long as he is not a director, officer or trustee of that organization nor as long as neither he nor any of his immediate family owns an equity of 10% in that organization nor is a representative of the organization.

### **Penalties**

The penalty for violation of Section 19.59(1), Statutes, is a forfeiture of not more than \$1,000.

### **County Ethics Ordinance**

Section 1.01 of the General Code of Winnebago County provides: “No County employee or official shall receive or offer to receive, either directly or indirectly, any gift, gratuity or other thing of value which he is not authorized to receive from any person who “(a) has or is seeking to obtain contractual or other business or financial

relationships with the county or county board; or (b) conducts operations or activities which are regulated by the county or county board". A fine for the first offense of not less than \$5.00 but not more than \$500.00 may be imposed with regard to violation of the ordinance. The ordinance is restricted to the receipt of gifts, gratuities or other things of value from persons or firms contracting with the county, seeking to obtain contracts or other business or financial relationships with the county or conducting operations or activities which are regulated by the county or county board. Like the state statute, no de minimus value is placed upon the gift, gratuity or other thing of value. It is unlikely that a court would interpret this ordinance to include the receipt of refreshments or promotional trinkets (pens, pencils, keychains, etc.).

### **County Personnel Policy**

County Personnel Policy applies generally to employees of Winnebago County, as opposed to elected officials. However, it should be noted that the Conflict of Interest section of the Personnel Policy Manual (Article 4) prohibits county employees from using their office or position for personal financial gain or the financial gain of their family. In addition, it precludes county employees from engaging in political activity during normal work hours or the use of county equipment, property or office space for that purpose. It also prohibits employees from directly or indirectly coercing any person to contribute monetary or other types of assistance for any political candidate, party or purpose. In addition, the policy prohibits any person in a supervisory position, whether an employee or public official, from using that supervisory position to appoint to any position, funded by his budget or operating under his direct or indirect supervision, a relative or any person considered to be a significant other. Definition of "relative" includes the spouse, parent, child, uncle, aunt, brother, sister, niece, nephew or any of the same relatives of that person's spouse. A "significant other" includes a person within whom the supervisor cohabitates and with whom he maintains an intimate relationship.

### **Discrimination and Harassment Prohibitions**

County Board Supervisors, like County employees, are prohibited by state and federal law from discriminating against persons on the basis of their race, religion, sex, sexual orientation, marital status or disability. County Board Supervisors in participating in employment selection processes, selection of contractors, and their interaction with employees of the county, as well as their interaction with employees of firms doing business with the county and those receiving services or having business with the county, need to be alert to the fact that discrimination or harassment on such a basis may not only open the county to liability but may open themselves to personal liability, especially if such discrimination or harassment, on the supervisor's part, is intentional in nature.

### **Legal Assistance**

Section 19.59(5)(b), Wisconsin Statutes, provides legal protection for county officials with regard to ethics questions. Pursuant to that section, if an advisory request is made of the County Corporation Counsel and an advisory opinion issued in writing by the Corporation Counsel with regard to an ethics question, such a request, and opinion serve as prima facie evidence of intent on the part of the county board supervisor to comply with the ethics code.

It should be noted that such a request can be made in confidence. The Corporation Counsel may release his opinion to the general public, provided that sufficient alterations are made to the opinion to disclose the identities of the individuals involved in the opinion.

If the county board supervisor believes that he or she has an ethical dilemma, it is recommended that they make a written request for a written opinion from the Corporation Counsel prior to taking any action or inaction with regard to a situation. Such a request provides legal protection to the supervisor should controversy arise with regard to the supervisor's actions in the future.

### **“Smell Test”**

As you can see by many of the examples provided in this Handbook, many of the situations that a county board supervisor may run into with regard to the ethics laws do not have clear cut answers. In deciding whether to take a specific action or to accept a gift of any value, it is recommended that a county board supervisor first administer a “smell test” to the situation. The “smell test” is, “Would any reasonable person believe that there was anything suspect or “fishy” with regard to the actions which I am contemplating taking?” If the answer to the question is “yes”, then your best course of action as a county board supervisor is either to seek a legal opinion from the Corporation Counsel or refrain from taking the action or participating in making a decision with regard to the subject matter which is before you. In the long run, the acceptance of a gift of little value is not worth the potential headache which may result to you and your family should the press or a political enemy choose to publicize the situation.

### **State Ethics Board Web Site**

The State Ethics Board maintains a web site, which includes opinions issued by it dating back to 1992. Its address is: <http://ethics.state.wi.us/>

### **State Statute Website**

The internet website for the Wisconsin State Statutes has the following address:

Website: [www.legis.state.wi.us/rsb/stats.html](http://www.legis.state.wi.us/rsb/stats.html)

### **Appendix**

Attached to this Handbook is an Appendix containing relevant State Statutes, County Code Provisions and portions of the Personnel Policy Manual.