

WINNEBAGO COUNTY  
BOARD OF SUPERVISORS

ETHICS  
HANDBOOK

Reviewed by Corporation Counsel - April 2022

# 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. Policy 8 – Conflicts of Interest
2. Policy 7.03 – 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 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 H 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 H 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 I 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 I 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 I Felony.

#### 3. Misconduct in Public Office – Class I Felony

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

Section 946.13 provides that a public officer or public employee that does any of the following is guilty of a Class I 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 I 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 I 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 civil penalty for violation of Section 19.59(1), Statutes, is a forfeiture of not more than \$1,000 for each violation.

The criminal penalty for intentionally violating Wis. Stat. 19.59 (1)(a), (b), or (c) is a fine of not less than \$100 or more than \$5000, imprisonment of not more than one year in the county jail, or both. Wis. Stat. 19.58 (1)(a).

### **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 (Policy 8) 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)

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(e) A state public official who is an officer or employee of the Wisconsin Economic Development Corporation may solicit, receive and retain on behalf of the state anything of value for the purpose of any of the following:

1. The sponsorship by the Wisconsin Economic Development Corporation of a trip to a foreign country primarily to promote trade between that country and this state that the Wisconsin Economic Development Corporation can demonstrate through clear and convincing evidence is primarily for the benefit of this state.

2. Hosting individuals in order to promote business, economic development, tourism or conferences sponsored by multi-state, national or international associations of governments or governmental officials.

(em) A state public official who is an officer or employee of the department of tourism may solicit, receive and retain on behalf of the state anything of value for the purpose of hosting individuals in order to promote tourism.

(f) A state public official or a local public official may receive and retain from the Wisconsin Economic Development Corporation anything of value which the Wisconsin Economic Development Corporation is authorized to provide under par. (e) and may receive and retain from the department of tourism anything of value which the department of tourism is authorized to provide under par. (em).

(g) A state public official who is a member of the Wisconsin commission for the U.S. semiquincentennial commission may solicit, receive, and retain on behalf of the state anything of value for the purposes specified under s. 45.13.

(4) If a state public official receives a payment not authorized by this subchapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the department or municipality with which he or she is associated or, in the case of a justice or judge of a court of record, with the director of state courts. If that is not practicable, the official shall return it or its equivalent to the payor or convey it to the state or to a charitable organization other than one with which he or she is associated.

**History:** 1977 c. 277; 1983 a. 61, 538; 1985 a. 203; 1989 a. 31, 338; 1991 a. 39; 1995 a. 27 ss. 455 to 457, 9116 (5); 2011 a. 32; 2015 a. 118 s. 266 (10); 2017 a. 112; 2021 a. 95.

The interaction of s. 19.56 with the prohibition against furnishing anything of pecuniary value to state officials under s. 13.625 is discussed. 80 Atty. Gen. 205.

**19.57 Conferences, visits and economic development activities.** The Wisconsin Economic Development Corporation shall file a report with the commission no later than April 30 annually, specifying the source and amount of anything of value received by the Wisconsin Economic Development Corporation during the preceding calendar year for a purpose specified in s. 19.56 (3) (e), and the program or activity in connection with which the thing is received, together with the location and date of that program or activity.

**History:** 1991 a. 39; 1995 a. 27 s. 9116 (5); 2011 a. 32; 2015 a. 118 s. 266 (10).

**19.575 Tourism activities.** The department of tourism shall file a report with the commission no later than April 30 annually, specifying the source and amount of anything of value received by the department of tourism during the preceding calendar year for a purpose specified in s. 19.56 (3) (em) and the program or

activity in connection with which the thing is received, together with the location and date of that program or activity.

**History:** 1995 a. 27; 2015 a. 118 s. 266 (10).

**19.579 Civil penalties.** (1) Except as provided in sub. (2), any person who violates this subchapter may be required to forfeit not more than \$500 for each violation of s. 19.43, 19.44, or 19.56 (2) or not more than \$5,000 for each violation of any other provision of this subchapter. If the court determines that the accused has realized economic gain as a result of the violation, the court may, in addition, order the accused to forfeit the amount gained as a result of the violation. In addition, if the court determines that a state public official has violated s. 19.45 (13), the court may order the official to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained. If the court determines that a state public official has violated s. 19.45 (13) and no political contribution, service, or other thing of value was obtained, the court may order the official to forfeit an amount equal to the maximum contribution authorized under s. 11.1101 (1) for the office held or sought by the official, whichever amount is greater. The attorney general, when so requested by the commission, shall institute proceedings to recover any forfeiture incurred under this section which is not paid by the person against whom it is assessed.

(2) Any person who violates s. 19.45 (13) may be required to forfeit not more than \$5,000.

**History:** 2003 a. 39; 2007 a. 1 ss. 121, 130, 131; 2015 a. 117; 2015 a. 118 s. 266 (10).

**19.58 Criminal penalties.** (1) (a) Any person who intentionally violates any provision of this subchapter except s. 19.45 (13) or 19.59 (1) (br), or a code of ethics adopted or established under s. 19.45 (11) (a) or (b), shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

(b) Any person who intentionally violates s. 19.45 (13) or 19.59 (1) (br) is guilty of a Class I felony.

(2) The penalties under sub. (1) do not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or employees.

(3) In this section “intentionally” has the meaning given under s. 939.23.

(4) A person who violates s. 19.50 may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

**History:** 1973 c. 90; Stats. 1973 s. 11.10; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.50; 1975 c. 200; 1977 c. 277 ss. 34, 37; Stats. 1977 s. 19.58; 2003 a. 39; 2015 a. 118.

**19.59 Codes of ethics for local government officials, employees and candidates.** (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 he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11. This paragraph does not prohibit a local public official from obtaining anything of value from the Wisconsin Economic Development Corporation or the department of tourism, as provided under s. 19.56 (3) (f).

(b) No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official’s vote, official actions or judgment, or could reasonably

be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

(br) No local public official or candidate for local public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office.

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

(f) Paragraphs (a) to (c) do not apply to the members of a local committee appointed under s. 289.33 (7) (a) to negotiate with the owner or operator of, or applicant for a license to operate, a solid waste disposal or hazardous waste facility under s. 289.33, with respect to any matter contained or proposed to be contained in a written agreement between a municipality and the owner, operator or applicant or in an arbitration award or proposed award that is applicable to those parties.

(g) 1. In this paragraph:

a. "District" means a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229.

b. "District board member" means a member of the district board of a district.

2. No district board member may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with this paragraph.

3. A district board member may receive and retain reimbursement or payment of actual and reasonable expenses for a published work or for the presentation of a talk or participation in a meeting related to processes, proposals and issues affecting a district if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

4. A district board member may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the member's use of the time, facilities, services or supplies of the district not generally available to all residents of the district and the member can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in subd. 3.

5. A district board member may receive and retain from the district or on behalf of the district transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the member can show by clear and convincing evidence were incurred or received on behalf of the district and primarily for the benefit of the district

and not primarily for the private benefit of the member or any other person.

6. No district board member may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

7. No district board member may use or attempt to use the position held by the member to influence or gain unlawful benefits, advantages or privileges personally or for others.

8. No district board member, member of a district board member's immediate family, nor any organization with which the district board member or a member of the district board member's immediate family owns or controls at least 10 percent of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from district funds unless the district board member has first made written disclosure of the nature and extent of such relationship or interest to the commission and to the district. Any contract or lease entered into in violation of this subdivision may be voided by the district in an action commenced within 3 years of the date on which the commission, or the district, knew or should have known that a violation of this subdivision had occurred. This subdivision does not affect the application of s. 946.13.

9. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the district with which he or she was associated as a district board member within 12 months prior to the date on which he or she ceased to be a district board member.

10. No former district board member, for 12 months following the date on which he or she ceases to be a district board member, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former member's responsibility as a district board member within 12 months prior to the date on which he or she ceased to be a member.

11. No former district board member may, for compensation, act on behalf of any party other than the district with which he or she was associated as a district board member in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former member participated personally and substantially as a district board member.

(1m) In addition to the requirements of sub. (1), any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance enacted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies.

(3) An ordinance enacted under this section may contain any of the following provisions:

(a) A requirement for local public officials, other employees of the county or municipality and candidates for local public office to identify any of the economic interests specified in s. 19.44.

(b) A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her eco-

conomic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality or on the part of former local public officials or former employees of the county or municipality.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employees to the extent that it has authority to regulate that conduct under the constitution or other laws.

(5) (a) Any individual, either personally or on behalf of an organization or governmental body, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit, an advisory opinion regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of a county or municipal ethics board, or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The county or municipal ethics board or the county corporation counsel or attorney shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. It is prima facie evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local governmental unit and abides by the advisory opinion, if the material facts are as stated in the opinion request. A county or municipal ethics board may authorize a county corporation counsel or attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in par. (b), neither a county corporation counsel or attorney for a local governmental unit nor a member or agent of a county or municipal ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

(b) A county or municipal ethics board, county corporation counsel or attorney for a local governmental unit replying to a request for an advisory opinion may make the opinion public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this subsection after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion

requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the county or municipal ethics board, the county corporation counsel or the attorney for the local governmental unit in connection with the request for an advisory opinion.

(6) Any county corporation counsel, attorney for a local governmental unit or statewide association of local governmental units may request the commission to issue an opinion concerning the interpretation of this section. The commission shall review such a request and may advise the person making the request.

(7) (a) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that the accused has violated sub. (1) (br), the court may, in addition, order the accused to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained.

(b) Any person who violates sub. (1) may be required to forfeit not more than \$1,000 for each violation, and, if the court determines that a local public official has violated sub. (1) (br) and no political contribution, service or other thing of value was obtained, the court may, in addition, order the accused to forfeit an amount equal to the maximum contribution authorized under s. 11.1101 (1) for the office held or sought by the official, whichever amount is greater.

(8) (a) Subsection (1) shall be enforced in the name and on behalf of the state by action of the district attorney of any county wherein a violation may occur, upon the verified complaint of any person.

(b) In addition and supplementary to the remedy provided in sub. (7), the district attorney may commence an action, separately or in conjunction with an action brought to obtain the remedy provided in sub. (7), to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(c) If the district attorney fails to commence an action to enforce sub. (1) (a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the district attorney refuses to commence such an action, the person making the complaint may petition the attorney general to act upon the complaint. The attorney general may then bring an action under par. (a) or (b), or both.

(cm) No complaint alleging a violation of sub. (1) (br) may be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election under s. 8.50, and ending on the date of that election, against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

(cn) If the district attorney for the county in which a violation of sub. (1) (br) is alleged to occur receives a verified complaint alleging a violation of sub. (1) (br), the district attorney shall, within 30 days after receipt of the complaint, either commence an investigation of the allegations contained in the complaint or dismiss the complaint. If the district attorney dismisses the complaint, with or without investigation, the district attorney shall notify the complainant in writing. Upon receiving notification of the dismissal, the complainant may then file the complaint with the attorney general or the district attorney for a county that is adjacent to the county in which the violation is alleged to occur. The attorney general or district attorney may then investigate the allegations contained in the complaint and commence a prosecution.

(d) If the district attorney prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the county wherein the violation occurs. If the attorney general prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the state.

History: 1979 c. 120; 1981 c. 149; 1981 c. 335 s. 26; 1983 a. 166 s. 16; 1991 a. 39, 269; 1995 a. 56, 227; 1999 a. 167; 2001 a. 109; 2003 a. 39; 2007 a. 1; 2015 a. 117; 2015 a. 118 ss. 204, 266 (10); 2017 a. 112.

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learning that the premises are being so used, permits such use to be continued is guilty of a Class I felony.

**History:** 1977 c. 173; 2001 a. 109.

**946.06 Improper use of the flag. (1)** Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag; or

(b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of such flag; or

(c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) Uses the flag for commercial advertising purposes.

**(2)** This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are no unauthorized words or designs on such flag and provided the flag is not connected with any advertisement.

**(3)** In this section “flag” means anything that is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of them.

**History:** 1977 c. 173; 2003 a. 243.

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed. The context imbued the display with protected elements of communication. *Spence v. Washington*, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).

The Washington flag desecration statute held unconstitutional in *Spence*, 418 U.S. 405 (1974), when applied to a mere display of an altered flag in the absence of a disturbance of the peace, was identical in all essential ways to this section. *Koser v. County of Price*, 834 F. Supp. 305 (1993).

## SUBCHAPTER II

## BRIBERY AND OFFICIAL MISCONDUCT

**946.10 Bribery of public officers and employees.** Whoever does either of the following is guilty of a Class H felony:

**(1)** Whoever, with intent to influence the conduct of any public officer or public employee 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 with intent to induce the officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty transfers or promises to the officer or employee or on the officer's or employee's behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

**(2)** 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.

**History:** 1977 c. 173; 1993 a. 486; 2001 a. 109.

Circumstantial evidence supported an inference that the defendant intended to influence a public official's actions. *State v. Rosenfeld*, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). *State v. Sammons*, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

**946.11 Special privileges from public utilities.**

**(1)** Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any

person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or 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 for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for 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.

**(2)** In this section:

(a) “Free pass” means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty.

(b) “Privilege” means anything of value not available to the general public, but does not include compensation or fringe benefits provided as a result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:

1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.

2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.

(c) “Public utility” has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

**(3)** This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

**History:** 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109; 2015 a. 117; 2017 a. 365 s. 111.

**946.12 Misconduct in public office.** Any public officer or public employee who does any of the following is guilty of a Class I felony:

**(1)** Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or

**(2)** In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

**(3)** Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a

discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

**History:** 1977 c. 173; 1993 a. 486; 2001 a. 109.

Sub. (5) prohibits misconduct in public office with constitutional specificity. *Ryan v. State*, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person who is not a public officer may be charged as a party to the crime of official misconduct. *State v. Tronca*, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. *State v. Schmit*, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. *State v. Chvala*, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442.

See also *State v. Jensen*, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. *State v. Chvala*, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442.

See also *State v. Jensen*, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine. Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. *State v. Chvala*, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442.

See also *State v. Jensen*, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. *State v. Jensen*, 2007 WI App 256, 06-2095. See also *State v. Schultz*, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06-2121.

### 946.13 Private interest in public contract prohibited.

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

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2 percent of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than \$10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

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(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2 percent of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

(12) (a) In this subsection:

1. "Research company" means an entity engaged in commercial or nonprofit activity that is related to research conducted by an employee or officer of the system or to a product of such research.

2. "System" means the University of Wisconsin System.

(b) Subsection (1) does not apply to a contract between a research company and the system or any institution or college campus within the system for purchase of goods or services, including research, if the interest that a system employee or officer has in the research company has been evaluated and addressed in a management plan issued by the individual or body responsible for evaluating and managing potential conflicts of interest and the management plan complies with the policy adopted under par. (d).

(d) The board shall adopt a policy specifying the contents required for a management plan under par. (b).

**History:** 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 417; 2009 a. 28; 2019 a. 36.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co-owner of the airport when he was appointed pursuant to advice and approval of the county corporation counsel. *State v. Davis*, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense. It does not include the element of corrupt motive. *State v. Stoehr*, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in, or have negotiated in his private capacity for, a position that had not yet been posted. *State v. Venema*, 2002 WI App 202, 257 Wis. 2d 491, 650 N.W.2d 898, 01–2502.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education [now Technical college] may not bid on and contract for the construction of a building project for a vocational–technical district that would entail expenditures exceeding \$2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the board. 60 Atty. Gen. 310.

Discussing conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to Medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

This section applies to county board or department purchases aggregating more than \$5,000 from a county supervisor–owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of \$5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a third person who obtained a loan under the program. 76 Atty. Gen. 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors, or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

A municipality's zoning decision is not a contract under sub. (1) (a), and therefore the statute does not apply to an official's participation in a zoning decision. OAG 9–14.

**946.14 Purchasing claims at less than full value.** Any public officer or public employee who in a private capacity

directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

**History:** 1977 c. 173; 2001 a. 109.

**946.16 Judicial officer collecting claims.** Any judicial officer who causes to be brought in a court over which the officer presides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

**History:** 1977 c. 173.

**946.17 Corrupt means to influence legislation; disclosure of interest.** Any person who gives or agrees or offers to give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

**History:** 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

**946.18 Misconduct sections apply to all public officers.** Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

**History:** 1977 c. 278; 1979 c. 110.

## SUBCHAPTER III

## PERJURY AND FALSE SWEARING

**946.31 Perjury.** (1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

- (a) A court;
- (b) A magistrate;
- (c) A judge, referee or court commissioner;
- (d) An administrative agency or arbitrator authorized by statute to determine issues of fact;
- (e) A notary public while taking testimony for use in an action or proceeding pending in court;
- (f) An officer authorized to conduct inquests of the dead;
- (g) A grand jury;
- (h) A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

**History:** 1977 c. 173; 1979 c. 110; 2001 a. 109.

An arbitrator selected from a list provided by the Wisconsin Employment Relations Commission is authorized by s. 111.10 to arbitrate as provided in ch. 298 [now ch. 788] and so is "authorized by statute" within meaning of sub. (1) (d). *Layton School of Art & Design v. WERC*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

Perjury consists of a false statement that the defendant knew was false, was made under oath in a proceeding before a judge, and was material to the proceeding. Materiality is determined by whether the trial court could have relied on the testimony in making a decision, not on whether it actually did. *State v. Munz*, 198 Wis. 2d 379, 541 N.W.2d 821 (Ct. App. 1995), 95–0635.

**PART I – GENERAL**

**1.01 RECEIPT OF GIFTS AND GRATUITIES.**

**(1)** No County employee or official shall:

**(a)** Receive or offer to receive, either directly or indirectly, any gift, gratuity, or other thing of substantial value, for the private benefit of the employee or official or his immediate family, from any person, corporation, organization, or entity which:

1. has obtained or is seeking to obtain contractual or other business, or financial relationships, with Winnebago County or its departments, agencies, or boards; or
2. conducts operations or activities which are regulated or subsidized by Winnebago County, its departments, boards, or committees.

**(b)** For purposes of this ordinance, “substantial value” shall be presumed to include any gift, gratuity, or other item with an aggregate value of \$25 or greater. “Substantial value” does not include promotional trinkets of de minimus value such as pens, pencils, keychains, etc., nor does it include refreshments such as coffee, soda, pastries, juice, etc., provided as a matter of societal etiquette.

**(c)** For purposes of this ordinance, an “official” is defined as one holding a “local public office” as defined in § 19.42(7w), Wis Stats.

**(d)** For purposes of this ordinance, “immediate family” is as defined in § 19.42(7), Wis Stats.

**(2)** Should an official of Winnebago County knowingly be prohibited from partaking in any official action by virtue of § 19.59(1)(c), Wis Stats., said official shall notify the Winnebago County Clerk of said prohibition in writing no later than ten (10) days after learning of said prohibition and the reasons therefore.

**(3) Penalty:** Violation of this ordinance shall be punishable under Section 25.04 of the General Code of Winnebago County.

**(4) Candidates Seeking Public Office:** Nothing herein shall prevent any County employee or official, as a candidate for public office, from accepting money, property, or other things of value as a campaign contribution pursuant to the provisions of Chapter 12, Wis Stats

**1.11 FEES AND LEGAL CUSTODIANS: PUBLIC RECORDS.**

**(1) Authority:** This section of the Code is adopted under the authority granted by §§ 59.52 and 19.35(3), Wis Stats.

- (1) Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the County Clerk shall file, deposit and keep in his office a copy of the Code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the County Clerk's office hours, subject to such orders or regulations which the County Clerk may prescribe for their preservation.

#### 25.04 PENALTY PROVISIONS

- (1) **General Penalty.** Any person who shall violate any of the provisions of this Code for which a penalty for such violation has not been provided otherwise in the Chapter in which the provision is found, or in Appendix A of Chapter 25, which is incorporated herein by reference and made a part of this Chapter herein, shall, upon conviction of such violation, be subject to a penalty which shall be as follows:
- (a) **First Offense Penalty:** \$100 together with the costs of prosecution and any statutory surcharges as established pursuant to § 814.61, Wis Stats, by the Wisconsin Legislature. Any person convicted of a violation, who shall default on payment of such forfeiture and costs of prosecution and statutory surcharges, shall be imprisoned in the County Jail until such forfeiture and costs are paid, but not exceeding 90 days.
  - (b) **Second Offense Penalty:** Any person found guilty of violating any ordinance or part of an ordinance of this Code who was previously convicted of a violation of the same ordinance within one (1) year and for which a penalty for such violation has not been provided in the Chapter in which the provision is found or in Appendix A to this Chapter shall, upon conviction thereof, forfeit \$250 for each such offense, together with costs of prosecution and statutory surcharges and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until such forfeiture and costs of prosecution and statutory surcharges are paid, but not exceeding 6 months.
  - (c) **Juvenile Offenses:** Notwithstanding any other Code provision, except for those offenses related to the possession or sale of alcohol and tobacco products, all forfeitures for violation of any Section of this Code wherein the individual violating the Code is 12 years of age or under, shall be \$55.00.
  - (d) **Court Costs and Surcharges:** Court costs, penalty surcharges, jail surcharges, crime lab and drug surcharges, court support surcharges, justice information surcharges, and any other surcharges adopted by the Wisconsin Legislature pursuant to § 814.61, Wis Stats, shall automatically take effect, as they relate to any violations of the General Code of Winnebago County, upon the effective date of said surcharges without any further action by the Winnebago County Board of Supervisors.
- (2) **Continued Violations.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the County from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

**(3) Execution Against Defendant's Property.** Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the County, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.

**(4) Citation Method of Enforcement.** Citations may be issued for violations of this General Code.

**(a)** The issuance of citations is expressly limited to the following County officials and employees except as otherwise herein stated, and the authority delegated to a County official or employee or city, village, or town law enforcement officer to issue such citations may only be granted or revoked by the County Board:

1. The County Zoning Administrator and such subordinates as he may delegate.
2. Any County law enforcement officer.
3. Landfill Superintendent and Scale Operator(s).
4. As to violations of Chapters 9 (Public Peace and Good Order) and Chapter 19 (Parks and Waters) of the Winnebago County General Code, by any duly appointed city, village, or town law enforcement officer of the municipality or town within Winnebago County wherein a violation of a Winnebago County ordinance occurs.
5. A designation of the offense in such manner as can readily be understood by a person making a reasonable effort to do so.
6. The time at which the alleged violator may appear in court.
7. A statement which in essence informs the alleged violator:
  - a. That a cash deposit based on the schedule established by the County Board from time to time and on file in the Office of the County Clerk may be made which shall be delivered or mailed to the Clerk of Circuit Court Branch V prior to the time of the scheduled court appearance.
  - b. That if a deposit is made, no appearance in court is necessary unless he is subsequently summoned.
  - c. That if a cash deposit is made and the alleged violator does not appear in court, he will be deemed to have entered a plea of no contest, or, if the court does not accept the plea of no contest, a summons will be issued commanding him to appear in court to answer the complaint.
  - d. That if no cash deposit is made and the alleged violator does not appear in court at the time specified, an action may be commenced to collect the forfeiture.

8. A direction that if the alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement required above has been read. Such statement shall be sent or brought with the cash deposit.
9. Such other information as the County deems necessary.
  - a. (Omitted)
  - b. § 66.0113, Wis. Stats. relating to violators' options and procedure on default is adopted and incorporated herein by reference.
  - c. Adoption of this section does not preclude the County Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters.
10. The Director of the Land and Water Conservation Department and such subordinates as he may delegate for the purpose of enforcement of Chapter 13, § 15.52, and § 17.31 of this Code.

#### **25.05 REPEAL OF GENERAL ORDINANCES**

All Ordinances heretofore adopted by the County Board and which are not included in this Code in form or by reference, except all ordinances or parts thereof relating to the following, are hereby repealed subject to the provisions of Sect. 25.06 of this Code.

- (1) The issuance of bonds and notes of the County of whatever name or description.
- (2) Additions or deletions to Federal, State, and County highway systems.
- (3) Rights, licenses, or franchises, or the creation of any contract with the County.
- (4) The fixing of salaries of public officials and employees.
- (5) The naming and changing of names of highways, public grounds, buildings, and parks.
- (6) Tax and special assessment levies.
- (7) Construction of public works.
- (8) Budget ordinances, resolutions, and actions.

#### **25.06 EFFECT OF REPEALS**

The repeal or amendment of any section or provision of this Code or of any other ordinances or resolutions of the County Board shall not:

(b) The prohibition from possessing dangerous weapons during work time does not apply to any employee who is authorized by the Winnebago County Executive, the Winnebago County Sheriff, or the Winnebago County District Attorney.

## **Policy 08 Conflicts of Interest**

### **8.01 County Office or Position**

No County employee may use his or her office or position for personal financial gain or for financial gain of the employee's family. "Financial gain" for purposes of the preceding sentence does not include compensation and benefits provided directly to the employee by the County.

No employee may handle work-related matters involving current or former family members or close friends without advance approval of the employee's department head.

No employee may engage in business activity, accept private employment, or render services for private interests when such business activity, employment, or service would: interfere with the employee's ability to fulfill all requirements and expectations of the employee's County position; impair the employee's judgment with respect to County duties; cause potential confusion as to whether services are being provided on behalf of the County or on behalf of a private concern; or cause negative publicity for the County.

### **8.02 Gifts and Gratuities**

No County employee shall solicit or accept for himself or another person any gift, gratuity, favor, service or promise of future employment, entertainment, loan or any other thing of substantial monetary value from a person who has or is seeking contractual or other business activities from the County or which are regulated by the County. This does not include acceptance of loans from banks or other financial institutions on customary terms of financing for personal use (such as home mortgage loans) and the acceptance of unsolicited advertising or promotional materials, such as pens and calendars, and acceptance of an award for meritorious public or personal contributions or achievements.

### **8.03 Nepotism**

(a) **Prohibition.** No employee may directly or indirectly supervise, or be in a position that exercises any supervisory or budgetary authority over, any other employee who is a "relative" or a "significant other." No employee may participate in any way in the selection process of a new employee if one of the applicants for the position is a "relative" or "significant other" of the employee.

(b) **Definitions.** For purposes of this provision, a "relative" includes a spouse or any one of the following: parent, child, stepchild, uncle, aunt, brother, sister, niece, nephew of the employee or of the employee's spouse. A person is an employee's "significant other" if the employee cohabits or maintains an intimate relationship with the person. An employee exercises supervisory authority over another employee if a supervisory relationship exists

through any line of authority extending vertically through one or more organizational levels of supervision or management.

(c) Relationships Occurring During Employment. If during the course of employment one employee becomes a “relative” or “significant other” of another employee so as to violate the terms of Policy 08.02(a), one of the parties must either transfer to a position in another department or work unit or terminate employment within six months. Employees are required to report the existence of any such relationship to a professional Human Resources Department professional staff member within thirty calendar days of the start of the relationship.

The department head and the Director of Human Resources or their designees may meet with the employees involved to determine an appropriate employment continuation arrangement. If another resolution is not agreed to, the County will transfer or terminate the employee who has been continuously employed by the County for a shorter period.

(d) Exception and Waiver. This policy does not apply to those supervisor/subordinate relationships which existed between related employees prior to April 1, 2008. The provisions of this policy may be waived on a case-by-case basis by the County Executive upon the advice and consent of the Director of Human Resources.

#### **8.04 Political Activity**

Employees are free to engage in political activity as private citizens on their own time and using their own resources. Employees are prohibited, however, from engaging in political activity while on work time or with the use of any County equipment, office space, property, communications systems, or any other resources. Political activity includes soliciting signatures or services for political purposes, making political contributions, circulating campaign literature or advertising, directly or indirectly inducing others to contribute money or other assistance to any political candidate, party, discouraging others from engaging in political activity, making telephone calls or sending emails for political purposes, and other actions intended to facilitate political or campaign activities.

#### **8.05 Solicitations**

No employee or group of employees may solicit at any County facility funds or other things of value from firms, persons, or corporations or other organizations without first obtaining a written permit from the County Board committee or committees having jurisdiction over the facility in which the solicitation is to occur, over the department employing the persons conducting the solicitation, and over the department having employees or members of the public being solicited.

No approval is required for the annual United Way campaign or for passive solicitations (sign-up sheets left in a break room) for youth group fundraisers. The rights of employees to not contribute to any solicitation are protected. No employee will suffer any adverse consequence as the result of a contribution decision.

elsewhere, should bring those concerns to the attention of his or her supervisor or, if the employee believes that the supervisor is implicated in those concerns, to the attention of the supervisor's supervisor.

## **7.02 Safety Concerns**

Management and subordinate employees alike have mutual responsibility to maintain a safe work environment. Any employee who has safety concerns should bring the matter to the attention of a supervisor as soon as reasonably possible. Any supervisor who becomes aware of any safety concern should either investigate in a timely manner or make sure that other management staff are doing so, take corrective action where warranted, and respond in a timely fashion to employees who raised the concern.

The provision of Policy 7.01 requiring an employee to comply with a work order or directive does not apply if doing so would seriously jeopardize the health or safety of the employee or of others.

## **7.03 Sexual Harassment**

(a) Definition and Prohibition. Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive working environment.

Sexual harassment on the job is prohibited whether it is initiated by a supervisor, co-worker, subordinate, client, customer, vendor or elected official.

(b) Reporting Responsibility. Any employee who experiences sexual harassment or other discrimination on the job should report the harassment or other discrimination as soon as possible to any professional staff member of the Department of Human Resources. Supervisors or department heads who become aware of any incident of sexual harassment or other discrimination are required to report such incidents to the Human Resources Department as soon as possible. In the event that the harassment or other discrimination involves any employee of the Human Resources, the harassment or other discrimination should be reported as soon as possible to the County Executive.

The Human Resources Department, or such other person as may be designated by the County Executive, will initiate an investigation into any report of sexual harassment or other discrimination as soon as reasonably practicable

(c) **Non-Retaliation.** Employees and others should feel free to report harassment or other discrimination. Any employee who retaliates against another who reports harassment or other discrimination, or who retaliates against another who cooperates with an investigation into such matters, will be subject to disciplinary action, which may include termination of employment.

#### **7.04 Alcohol and Drug Use**

(a) **Use of Drugs and Alcohol.** County employees may not:

1. Be under the influence of alcohol or illegal drugs at any time during working hours.
2. Sell, possess, transfer, or purchase illegal drugs at any time.
3. Consume alcohol or illegal drugs on duty, including any paid or unpaid lunch periods or breaks during the normal work day. This provision does not prohibit consumption of alcohol after normal working hours while at conferences, seminars, or training sessions.
4. Use or be under the influence of alcohol or illegal drugs in any amount when using a County vehicle, whether on or off duty.
5. Report for duty or remain on duty when the employee uses any controlled substance, or any prescription or non-prescription medication, if such use adversely affects the employee's ability to safely and competently perform his or her job. Employees must report to their supervisors before starting work when they take any medication that might affect their senses, motor ability, judgment, reflexes, or otherwise affect their ability to perform their jobs.

(b) **Reasonable Suspicion.** In the event that a reasonable suspicion exists that an employee may be using or under the influence of any drug, including alcohol, during duty hours to the extent that his or her ability to perform his or her duties may appear to be impaired, a supervisor should attempt to have the suspicion confirmed by another supervisor, a Human Resources member, or other responsible employee. A Human Resources professional staff member should be contacted before taking further action if reasonably possible.

Should a supervisor or Human Resources decide that an employee must undergo a drug or alcohol test, a member of management, a Human Resources professional staff member, or an employee of the Sheriff's Office will drive the employee to the testing site and back to the work site. Testing may be provided directly by the Sheriff's Office. Should the test results be non-negative, inconclusive, or unavailable, the employee will be permitted to contact a legally eligible adult for transportation home.

If an employee refuses the test or fails to cooperate with the procedure, disciplinary action will be considered in at least the level that would be considered if there had been a test producing a positive result.

(c) **Licensing Requirements.** Employees required to possess a Commercial Driver's License, subject to other licensing requirements, or who work in a safety-sensitive position