

**Council on Workforce Investment
August 2019**

Legal Overview:
Conflicts of Interest/Ethics
Open Meetings
Public Records

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**CONFLICTS OF INTEREST
AND ETHICS**



**Conflicts of Interest and Ethics
for State Public Officials**

- 2017 Executive Order #152 reconstituted the Governor's Council on Workforce Investment
- Members appointed by the Governor are "State Public Officials" subject to statutory ethics provisions



Long-standing statutory policy:

- “The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust.”

Wis. Stat. § 19.45



Balanced with . . .

- “The legislature . . . recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government.”

Wis. Stat. § 19.45



Restrictions on state public officials:

- A state public official may not use his or her position for **private financial gain** or to obtain anything of substantial value.
 - Includes immediate family and organizations with which the public official is associated

Wis. Stat. § 19.45



Restrictions on state public officials (cont.):

- A state public official may not use his or her position to produce or assist in producing a substantial direct or indirect benefit for him or herself, immediate family, or associated organization.

Wis. Stat. § 19.46



Conflict of Interest Sec. 101 of WIOA

- A Council member may not—
- vote on a matter under consideration by the Council
 - regarding the provision of services by such member (or by an entity that such member represents); or
 - that would provide direct financial benefit to such member or the immediate family of such member; or



Conflict of Interest Sec. 101 of WIOA (cont.)

- engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

29 U.S.C. § 3111



OPEN MEETINGS



The Wisconsin Open Meetings Law

- Wis. Department of Justice – Office of Open Government, October 2016
- <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>



Open Meetings Law
Wis. Stat. § 19.81

- “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**”



Council is a “governmental body”

- All Council meetings
 - Must be preceded by public notice, and
 - Must be held in a place that is open and reasonably accessible to all members of the public.



A “meeting” occurs whenever:

- Members **convene** for the **purpose** of conducting governmental business; and
- The **number** of members present is sufficient to determine the body's course of action

State et al. v. Newspapers v. Showers, 135 Wis. 2d 77 (1987)



Meetings presumed open

- Meetings begin in open session
 - Citizens right to attend and observe
 - Allow recording, filming, or photographing the meeting



Meetings presumed open (cont.)

- By motion, may go into closed session
 - Votes of each member must be recorded
 - Chair must announce the statutory exemption authorizing closed session and the nature of the business to be considered



Public Records



The Wisconsin Public Records Law

- Wis. Department of Justice - Office of Open Government, October 2016
- <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>



Public Records Law Wis. Stat. § 19.31

- The public records law “shall be construed in every instance with a **presumption of complete public access, consistent with the conduct of government business.** The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”



The Council must produce records upon request

- “Record” is “[a]ny material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.”

Wis. Stat. § 19.32(2)



Not a “record”

- Drafts, notes, and preliminary documents
- Published material available for sale or at library
- Purely personal property
- Material with limited access rights, such as copyrights or patents



Emails, text messages, and documents on private accounts

- May be “records”
- Content determines whether it is a “record,” not the medium, format or location
- **Personal materials on the same private accounts are not subject to disclosure**



Sufficient request

- May be in writing or oral
- “Magic words” not required
- Must be reasonably specific as to time and subject matter
- Must reasonably describe the information or records requested



Response

- As soon as practicable, without delay:
 - Provide records
 - Deny or partial denial
 - Respond that there are no records



If Council receives a request:

- DWD will assist with the response
- Do not delay – forward the request to DWD Legal:
OpenRecords@dwd.wisconsin.gov
- Council members will likely need to search for responsive records

Questions?

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