



Milwaukee County Ethics Board

DATE: December 9, 2021

FROM: Milwaukee County Ethics Board

SUBJECT: Formal Opinion Regarding Certain Standards of Conduct in M.C.G.O. §9.05(2)

CC: Corporation Counsel

INTRODUCTION

In the past few years, the Ethics Board (the “Board”) has addressed multiple inquiries relating to certain standards of conduct described in M.C.G.O. §9.05(2) governing conflicts of interest. The Board has determined that a formal opinion would be appropriate to address this recurring topic.

Section 9.09(2), M.C.G.O. authorizes the Board to issue formal opinions:

The Board may issue a formal opinion interpreting the ethics code or applying the ethics code to postulated facts without a request from a county public official or employee. This process allows the board to interpret the application of the Code to a universal concern and to address an issue that might not otherwise be raised in an advisory opinion request, investigation request or a verified complaint. Formal opinions serve as an educational tool for Code compliance and a means for persons to avoid engaging in an activity that might otherwise become a matter for the investigation request or the verified complaint processes.

- (a) If the Board determines that a formal opinion would provide useful guidance on an issue of broad concern or assist individuals who are subject to the Code to comply with its terms, the ethics board shall adopt a resolution to that effect which identifies the issue the ethics board intends to address.
- (b) Upon adoption of such a resolution, the Board shall discuss that issue in a properly noticed meeting pursuant to the open meetings law.

At its meeting on November 9, 2021, the Board, by unanimous vote, adopted a resolution consistent with the goals of M.C.G.O. §9.09(2) to issue a formal opinion providing guidance on compliance with the Ethics Code, specifically as it relates to M.C.G.O. § 9.05(2)(a) and (c).¹

Consistent with the foregoing, the Board now issues this formal opinion.

OPINION

This opinion will consolidate the Board's prior guidance and interpretations on a subject of universal concern – compliance with certain standards of conduct under Section 9.05(2)(a) and (c) of the Ethics Code governing conflicts of interest involving official action for private benefit. It will further serve as a functional reminder for County officials and employees within the Board's jurisdiction.

Purpose of M.C.G.O. §9.05:

M.C.G.O. §9.05(1) describes the purposes behind §9.05's standards of conduct. Milwaukee County officials and employee hold their position in public trust, and any effort to realize personal gain through official conduct violates that trust. Officials and employees do retain their rights as citizens to their own personal and economic interests and may engage in other pursuits or forms of gainful employment. However, pursuing such interests should not interfere with the full and faithful discharge of their County duties. This means that, when necessary, employees and officials must prioritize their public duties and responsibilities over those personal pursuits and private interests. In order to maintain the public trust, officials and employees must not use their County position or resources in a way that creates a private benefit, directly or indirectly, for themselves. The Code distinguishes between conflicts that may be minor, inconsequential, or unavoidable in society and those that are substantial and material.

Conflicts of Interest:

Generally speaking, a conflict of interest is a situation in which an individual has competing interests or loyalties. The term is defined for the purposes of the Ethics Code in M.C.G.O. §9.02(5) as “[a]public official's or employee's action or failure to act in the discharge of his or her official duties which could reasonably be expected to produce or assist in producing a substantial economic or personal benefit for such official, [their] immediate family or an organization with which [they are] associated.”

M.C.G.O. §9.05(2) describes the specific conduct that would violate the Ethics Code. Sections 9.05(2)(a) and (c)² prohibit public officials or employees from using their official position or conduct to obtain private benefits or financial gain:

9.05(2)(a) *No financial gain or anything of substantial value:* Except as otherwise provided or approved by the county board, no county public official or employee shall use [their] public position or office to obtain financial gain or anything of substantial value for the private benefit of [themselves] or [their] immediate family, or for an organization with which [they are] associated. This paragraph does not prohibit a county elected official from using the title or prestige of [their] office to obtain campaign contributions that are permitted by and reported as required by ch. 11, Wis. Stats.

9.05(2)(c) *No substantial interest or benefit:* Except as otherwise provided in paragraph (1.), no public official or employee shall:

1. Take any official action substantially affecting a matter in which the public official, employee, a member of [their] immediate family, or an organization with which the public official or employee is associated has a substantial financial interest.
2. Use [their] office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the public official, employee, members of the public official's or employee's immediate family either separately or together, or an organization with which the public official or employee is associated.

Conflict of Interest Analysis in Cases of Official Action for Private Benefit:

1. Public Officials and Employees

Persons are subject to the Ethics Code when they become public officials (whether elected or appointed) or employees of the County. Certain private benefits those persons enjoyed in the past may violate the Code if received while serving as a public official or employee.

2. Official Duties

M.C.G.O. § 9.05(2)(a) and (c) are concerned with official actions or the use of a public office or position. When employees and officials are acting within the scope of their County position or utilizing County resources, they are considered to be conducting their official duties. An issue may arise when an employee or official is using paid work time for their own personal economic advantage.

3. Substantial Benefits and Interests

A violation of M.C.G.O. § 9.05(2)(a) and (c) may occur if by their actions or through their position, an official or employee obtains *financial gain or anything of substantial value*, produces or assists in the production of *substantial benefits*, or affects a matter in which they have a *substantial financial interest*. The term “substantial value,” as well as the term “anything of value” under M.C.G.O. §9.02(1), refers to anything valued at fifty dollars (\$50.00) or more. Things of *substantial value* can take any form including money, property, favor, service, payment, advance, forbearance, loan, promise of future employment, business, or other consideration.³ The Code's definition of a “significant fiduciary relationship”⁴ suggests that an official or employee with an equity interest of at least ten (10) percent or \$5000.00 in an organization would have a *substantial financial interest* in that organization. *Substantial benefits* are generally financial but may also be non-economic in nature.

4. Immediate Family

Code violations may arise not only from benefits or financial gains obtained directly by a public official or employee, but also from benefits or gains provided to *immediate family* members. “Immediate family” members include a spouse and, in certain cases, a child, parent, sibling, in-law or step-relative.⁵

5. Associated Organizations

Code violations also arise from benefits or gains directed to organizations with which the official or employee (or his immediate family) are *associated*. According to M.C.G.O. §9.02(2), a person is “associated” with an organization if they or their immediate family is a director, officer, or trustee of the organization, if they have a significant fiduciary relationship with the organization, or if they own or control, directly or indirectly, and severally or in the aggregate, at least ten (10) percent of the outstanding equity of the organization.

Potential Violation Examples:

- A County job trainer promotes at an official County event to County employees a side business they operate that offers enhanced training at a premium.
- An official or employee uses County letterhead to promote an organization for which they or their spouse is a director.
- An employee passes out fliers during work time for a charity event on behalf of a non-profit for which they serve as an officer and fundraiser.
- An employee steers a contract to a vendor considering a job application from the employee’s financially dependent child.
- A public official helps an organization receive a contract for work with the County while the official’s spouse is a director and 10% owner of the organization.

Conclusion:

This opinion highlights some of the ethical standards governing conflicts of interest with which all County officials and employees are expected to comply. The examples contained in this opinion are fact-specific and should not be used for general application to other facts or scenarios. Individuals are encouraged to bring potential conflicts to the Board to receive confidential input on their scenario. If you have any questions about this opinion or have questions about a potential conflict, please reach out to the Ethics Board’s office for information.

Respectfully,

THE MILWAUKEE COUNTY ETHICS BOARD

<u>/s/ Christopher Meuler</u>	<u>12/9/2021</u>
Christopher Meuler, Chair	Date
<u>/s/ Christine Hansen</u>	<u>12/9/2021</u>
Christine Hansen, Vice Chair	Date
<u>/s/ Richard Donner</u>	<u>12/9/2021</u>
Richard Donner	Date
<u>/s/ Dana Guthrie</u>	<u>12/9/2021</u>
Dana Guthrie	Date
<u>/s/ Clarence Nicholas</u>	<u>12/9/2021</u>
Clarence Nicholas	Date
<u>/s/ Rachel Yates</u>	<u>12/9/2021</u>
Rachel Yates	Date

¹ The agenda for the Board meeting on November 9, 2021 provided:

5.0 Report of the Chair

5.1 Consideration of the language of M.C.G.O. §9.05(2)(a) *No financial gain or anything of substantial value* and (c) *No substantial interest or benefit*.

Purpose of discussion: The Board seeks to issue a formal opinion on the provisions cited above in the interest of public education regarding what constitutes a conflict of interest for the purposes of the Ethics Code. This opinion will be circulated to all employees and officials.

² This opinion focuses on Section 9.05(2)(a) and (c) but there are several provisions in the Code that may also apply to such conflicts.

³ “Anything of value” does not include compensation and expenses paid by the county, fees and expenses which are permitted and reported under section 9.14 of the Code, political contributions which are reported under ch. 11, Wis. Stats., or hospitality extended for a purpose unrelated to county business by a person other than an organization. See M.C.G.O. §9.02(1).

⁴ To have a “significant fiduciary relationship” with an organization, one must own or control, directly or indirectly, at least ten (10) percent of the outstanding stock or stock of any business corporation having a cost or market values of at least five thousand dollars (\$5,000), or an interest of at least ten (10) percent or five thousand dollars (\$5,000) of an organization. See M.C.G.O. §9.02(18).

⁵ “Immediate family” includes a child, parent, sibling or an in-law or step-relative of the same degree who receives from an individual, or from whom the individual receives, directly or indirectly, one-half (½) of their support. See M.C.G.O. §9.02(9).