

CR 87-159

CERTIFICATE

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STATE OF WISCONSIN
OFFICE OF THE SECRETARY OF STATE } ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS: I, Douglas LaFollette, Secretary of State and custodian of the official records, certify that the annexed rule, relating to lobbying regulation, was duly approved and adopted by the Office of the Secretary of State on June 28, 1988.

I further certify that said copy has been compared to me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at 201 E. Washington Avenue, Madison, Wisconsin this 28TH day of June, 1988.

Douglas LaFollette

Douglas La Follette

1-1-89

COPY

OFFICE OF THE SECRETARY OF STATE

IN THE MATTER OF
RULEMAKING PROCEEDINGS

ORDER OF THE
OFFICE OF THE
SECRETARY OF STATE

AN ORDER to repeal and recreate Chapter SS 2 of the Wisconsin Administrative Code, relating to lobbying.

Analysis prepared by the Office of the Secretary of State.

ANALYSIS

Statutory authority: s.227.11(2)(a), Stats.
Statutes interpreted: ss.13.62, 13.625, 13.63, 13.64, 13.65,
13.66, 13.68, 13.685, 13.695, and 13.70, Stats.

The proposed rule interprets provisions of Chapter 13, subchapter III of the Wisconsin Statutes relating to the regulation of lobbying. The rule primarily addresses four areas: definitions of terms; reportable lobbying expenditures; prohibited practices and exceptions; and registration and licensing requirements.

Definitions. Section SS 2.01 defines key terms which affect the characterization and classification of persons and activities as they apply to the lobby statutes. For example, "office or employe of the state" is defined to include, in essence, anyone paid by the state and employed by it in classified or unclassified civil service positions, as well as members of state boards, commissions, councils and the like. "On behalf of" has been defined in terms of the legal principles of agency relationships in a way that clarifies under what circumstances one person may act in the interest of another. A "thing of pecuniary value" has been defined to include any item with a marketable value. "Meeting," as it relates to the prohibited practices section [s.13.625(3)] which in turn refers to s.19.56, Stats., of the Ethics Code, has been clarified to mean either any definition given to it by the state ethics board; or, in the absence of such a definition, a regular meeting or function of the membership or a governing board of a principal, or a public forum or ceremony sponsored by a principal, to which has been invited a majority of their membership, governing directors and officers, or the general public. Furthermore, a "bona fide social function" or a "meeting of a nonprofit organization or

agency," as used in the prohibited practices section have been given meanings similar to that of "meeting."

The proposed rule, in section SS 2.02(1), distinguishes between contract and "in-house" lobbyists based on a person's "regular duties." In essence, this section provides that a contract lobbyist becomes a lobbyist at the time of his or her first paid direct contact with a state officer or employee that attempts to influence legislative or administrative action. A lobbyist that is employed in-house by a principal or a state agency becomes a lobbyist at the time of his or her seventh day of direct lobbying contact in a six month reporting period. Section SS 2.02 also clarifies that lobbyists, who should be licensed but are not, are still subject to the lobby law. Section SS 2.03 relatedly clarifies that principals who should be registered, but are not, are still subject to the lobby law.

Reportable expenditures. SS 2.06 clarifies that lobbying expenditures include all expenditures made and obligations incurred by a principal which reasonably or directly relate to lobbying activities. Generally, all expenditures and obligations for salaries and expenses of a lobbyist are reportable. All expenditures and obligations for researching and preparing for lobbying are reportable. For lobbyists who are also paid by a principal to perform non-lobby related duties, only that portion of the salary related to lobbying or preparation for lobbying is reportable. This reportable portion is based either on the lobbyist's percentage of time devoted to lobbying activities, on any arrangement specified in a written contract that fairly reflects the actual time and value of the lobbying activities, or on any itemized time records kept for this purpose. Expenditures and obligations related to research, and other preparations for lobbying are required to be reported in whole, if used solely for lobbying purposes, or in a proportion reasonably reflecting the amount of lobbying use. The definition of "lobbying communication" in SS 2.01, together with other provisions of SS 2.05, establishes that expenses incurred in connection with activities listed in s.13.70(1)(a), Stats., are reportable, unless the principal is exempt because its lobbyist engages solely in those activities.

Prohibited practices. SS 2.07, like its statutory counterpart, begins with the premise that, as a general proposition, no lobbyist or principal may furnish anything of pecuniary value to a state official or employee or candidate for elective state office. The rule clarifies that the prohibition applies to indirect as well as direct furnishing of items of value when the principal or lobbyist actually intend for the state official, employee or candidate to receive the item. The rule also provides that principals and lobbyists cannot furnish a thing of marketable value to a spouse, minor child, or employer of a state official, employee or candidate, or to a business owned or controlled by the official employee or candidate, unless it is through an "arm's-length" transaction in which the fair

market value of the item is received by the principal or lobbyist in return.

As noted, section SS 2.01 defines the terms "meeting" and "bona fide social function." In essence, meetings and bona fide social functions are identified by such factors as who is invited to attend and the purpose of the meetings and social functions.

Licensing, Registration and Authorization. Sections SS 2.05 through 2.07 provide details on the requirements for licensing a lobbyist, registering the principal, and authorizing the lobbyist to lobby for the principal. Forms prescribed by the Office of the Secretary of State must be completed and properly signed in order to be filed. The current requirements that all blanks on every form must be completed has been eliminated. Procedures and requirements for using powers-of-attorney to fulfill signature requirements have been included in the proposed rule.

ORDER

Chapter SS 2 of the Wisconsin Administrative Code is repealed and recreated to read:

SS2.01 Definitions. In Chapter 13, subchapter III, Stats., and Chapter SS2, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning.

(1) "Administrative action" has the meaning specified in s.13.62(1), Stats., and shall not include a "contested case" as defined in s.227.01(3) nor the procedures set forth in Chapter 227, subch.III, Stats.

(2) "Lobbying communication" means a direct oral or written communication with any agency official, elective state official, or legislative official that attempts to influence legislative or administrative action, unless otherwise exempted under s.13.70, Stats.

(3) "Officer or employe of the state" includes any person holding a classified or unclassified position in the state civil service under s.230.08, Stats.; or any member of any board, commission, committee or council created in or attached to the executive, judicial or legislative branch of the state government.

(4) "On behalf of" means acting in the interest of another as that person's agent, proxy or representative in any matter with that person's actual or constructive knowledge and consent.

(5) "Person" means a natural person, corporation, partnership, cooperative, association, proprietorship, firm, enterprise, franchise, trust or other business organization, and bodies politic or corporate.

(6) "Proposal" as used in s.13.62(1), Stats., means a written or oral communication which by reasonable interpretation of its terms

seeks to initiate the promulgation, amendment, repeal or rejection of a rule by an agency.

(7) A "thing of pecuniary value" as used in s.13.625, Stats., includes money, food, meals, beverages, lodging, transportation, entertainment, campaign contributions and any other item or service reasonably capable of bringing a price in the open marketplace.

(8) (a) For purposes of s.13.625(3) and (7), Stats., to determine whether s.19.56, Stats., applies, a "meeting" under s.19.56, Stats., means a meeting as defined by rule, formal opinion or informal opinion of the state ethics board in a particular case.

(b) In the absence of any rule, formal opinion or informal opinion of the state ethics board in a particular case, a meeting means either:

1. a regular gathering or function of the membership or governing board of a principal or of a division, unit, or local chapter of the principal; or
2. a public forum or ceremony sponsored by a principal to which have been invited a majority of the principal's members, directors, officers or employes, or the general public, or both.

(9) For purposes of s.13.625(4), Stats., a "bona fide social function" or "meeting of a nonprofit organization or agency" means either:

- (a) a regular meeting of the membership or governing board of an organization or agency or of a division, unit, or local chapter of the organization or agency; or
- (b) a special social function or special meeting to which have been invited either a majority of the organization's or agency's members, directors, officers or employes, or the general public, or both.

SS2.02 Lobbyists. (1) Lobbying shall be deemed to be part of the regular duties of any person within the meaning of s.13.62(11), Stats.;

- (a) If the person's relationship to a principal is that of an employe, officer or director, and the person is paid a salary or given consideration other than reimbursement of expenses by that principal, and the person makes lobbying communications on behalf of the principal on any part of each of 7 days in a reporting period referred to in s.13.68(intro.), Stats.;
- (b) If the person's services are retained, contracted for, purchased, or obtained on any other basis not covered in par.(a) by, or on behalf of, a principal for the purpose of lobbying as defined by s.13.62(10), Stats.

(2) Any volunteer or other representative of a principal who lobbies on that principal's behalf and who is either not compensated, or compensated for no more than the actual and reasonable expenses incurred

for that lobbying activity is not a lobbyist within the meaning of s.13.62(11), Stats.

(3) A person is deemed to be paid by a principal for lobbying, within the meaning of s.13.62(11), Stats., whether the payment or other form of consideration passes directly, or through one or more intervening parties, from the principal to the lobbyist with the intent that the person perform lobbying activities for that principal. No intervening party shall, by virtue of handling or transferring a payment, be deemed a principal.

(4) A lobbyist, as defined in s.13.62(11), Stats., shall be subject to Chapter 13, subch.III, Stats., and this chapter whether or not he or she has been properly licensed under ss.13.63 and 13.66, Stats.

(5) In order for a lobbyist to be reinstated to the practice of lobbying under s.13.63(3), Stats., the documents and fees referred to in ss.13.63(1), 13.64, and 13.65(3), Stats., shall be submitted to the secretary of state as though the lobbyist were being licensed for the first time.

SS2.03 Principals. (1) A principal, as defined in s.13.62(12), Stats., shall be subject to Chapter 13, subch.III, Stats., and this chapter whether or not it has been properly registered under ss.13.64 and 13.66, Stats.

(2) A director of a corporation referred to in s.13.62(12), Stats., shall not be considered a principal.

(3) Upon termination of a lobbyist's lobbying-related employment by a principal under s.13.64, Stats., a termination statement shall be filed with the secretary of state on a form prescribed by the secretary. A separate termination form shall be submitted for each lobbyist whose employment has been terminated. The form shall be signed by or on behalf of the principal.

(4) A copy of the lobbyist's report, filed with the secretary of state under s.13.67, Stats., shall be a carbon copy or a photocopy of the report submitted by the lobbyist to the principal.

(5) A statement of expense by a principal, under s.13.68(intro), Stats., shall be submitted on the statement of expense form prescribed by the secretary of state. The form shall be signed by or on behalf of the principal. The statement shall set forth the opening and closing dates of the period covered by the statement.

(6) If a revocation of the statement under s.13.70(5), Stats., is filed with the secretary of state, then a report under s.13.67, Stats., and a statement under s.13.68(intro.), Stats., shall cover the entire period of time established by s.13.68(intro.), Stats.

(7) (a) Any statement or form filed with the secretary of state and required by law to be signed by a principal, but which is signed by a person other than an officer or director if the principal is a corporation, cooperative, association or other similar type of

organization, or a partner if the principal is a partnership, shall be accompanied by a power of attorney which:

1. States the name of the individual authorized to act as the principal's agent or representative;
2. States the scope of that individual's authorization to sign documents on behalf of the principal;
3. States the duration of the authorization;
4. Contains original signatures or is a properly authenticated copy.

- (b) Once filed, the power of attorney shall remain effective for purposes of this section until either the expiration of its stated period of duration, the filing of a subsequent power of attorney superseding it, or the receipt by the secretary of state of written notification from the principal withdrawing, cancelling or otherwise terminating the power of attorney, whichever shall occur first.

SS2.04 Licensing, Registration and Authorization. (1) An application for a license to act as a lobbyist shall be made on the application form prescribed by the secretary of state. A separate application form shall be submitted for each principal on whose behalf the lobbyist will lobby. The form shall be signed by the lobbyist.

(2) The secretary shall review and make a determination on the application for licensing as a lobbyist within 5 business days of receipt of the completed application materials.

(3) Registration of a principal and lobbyist under s.13.64, Stats., and authorization of a lobbyist under s.13.65(3), Stats., shall be accomplished by filing with the secretary of state the registration and authorization form prescribed by the secretary. The form shall contain the full legal name of the principal. A separate registration and authorization form shall be submitted for each lobbyist who has been employed to lobby on behalf of the principal. The form shall be signed by or on behalf of the principal.

(4) A principal shall make additional entries in the secretary of state's file under s.13.65(2), Stats., by submitting to the secretary an amendment form prescribed by the secretary. A separate amendment form shall be submitted for each lobbyist employed by the principal. The form shall be signed by or on behalf of the principal.

(5) The name of a lobbyist is deemed entered in the file of the secretary of state, as referred to in s.13.66(1), Stats., only after the registration and authorization form has been filed with the secretary in accordance with this section. A lobbyist is deemed licensed, as referred to in s.13.66(1), Stats., only after a license has been issued to such lobbyist under s.13.63(1), Stats. Lobbying activities may be commenced upon submission to the secretary of state of all properly completed application, registration and authorization materials.

SS2.05 State Agency Lobbying. (1) Attempting to influence legislative action shall be deemed to be part of the regular duties of any officer or employe of a state agency referred to in s.13.695(1), Stats.:

- (a) If the officer or employe makes lobbying communications which are not exempted by s.13.70, Stats., on behalf of such agency, with any party or body referred to in s.13.62(8), Stats.; and
- (b) The lobbying communications are made on all or any part of each of 7 days in a reporting period referred to in s.13.68(intro.), Stats.

(2) A statement, under s.13.695(1), Stats., shall be submitted on a statement of legislative activities form prescribed by the secretary of state. The form shall be signed by the agency head or his or her designee. The statement shall recite the opening and closing dates of the period covered by the statement.

(3) An agency shall report any change under s.13.695(2), Stats., by submitting to the secretary of state an amended statement of legislative activities form prescribed by the secretary of state. The form shall be signed by the agency head or his or her designee. The report shall recite the date on which such change occurred.

SS2.06 Reportable Expenditures. For each reporting period referred to in s.13.68(intro.), Stats., the following expenditures and obligations made or incurred by a principal and by a lobbyist for that principal shall be deemed to have been made and incurred by a principal for lobbying, within the meaning of s.13.68, Stats.:

(1) The salaries, fees, and retainers paid by the principal for lobbying to any lobbyist, as calculated by either of the following means most applicable to the principal's circumstances:

- (a) If the lobbyist's relationship to the principal is that described under s.SS2.02(1)(a), then the amount of the lobbyist's salary, including fringe benefits, that reasonably reflects the percentage of time spent by the lobbyist in preparing for and making lobbying communications in relation to the total time spent by the lobbyist in working for that principal.
- (b) If the lobbyist's relationship to the principal is that described under s.SS2.02(1)(b), and:
 - 1. If the lobbyist provides only lobbying services to the principal, then the total fee or retainer paid by or on behalf of the principal for lobbying.
 - 2. If the lobbyist is employed or retained for both lobbying and non-lobbying activities, then the amount of the fee or retainer paid by the principal for lobbying that reasonably reflects the percentage of time spent by the lobbyist in preparing for and making lobbying communications in relation to the total time spent by the lobbyist in working for the principal.

3. If the lobbyist is employed or retained on behalf of the principal by an intervening person (i.e. a private law firm), then the amount of the fee or retainer paid by the principal to the intervening person for lobbying that reasonably reflects the time spent by the lobbyist in preparing for and making lobbying communications for the principal.
4. If the amount of the fee or retainer paid by the principal for lobbying is specified by terms contained in a written contract and reasonably reflect the actual time and value of the lobbyist's lobbying activities, then that amount specified in writing.

(c) If any lobbyist or principal utilizes time records, billing charts or other similar itemization methods to account for the time spent in preparing for and conducting lobbying activities, then the amounts reflected by those itemized methods.

(2)(a) All expenditures made and obligations incurred for researching and preparing studies, reports, analyses or other information used for making lobbying communications not otherwise included in the amounts reported under s.13.68, Stats., and this section. These expenditures and obligations shall be reported in the first reporting period during which any portion is used in connection with a lobbying communication.

(b) If a lobbying communication is used for both lobbying and nonlobbying purposes, then the amount equal to the research and preparation expense that reasonably reflects the percentage of use to which the lobbying communication is put for lobbying activities in relation to nonlobbying activities.

(3) All expenditures made and obligations incurred in connection with any activity listed in s.13.70(1)(a), Stats., including research and preparation for those activities, unless the lobbying activities of any lobbyist to which those expenditures or obligations relate are limited solely to those activities listed in s.13.70(1)(a), Stats., or unless the amounts have otherwise been included in the amounts reported under s.13.68, Stats., and this section.

(4) If the lobbyist's relationship to the principal is that described under s.SS2.02(1)(a), then the amount which reasonably reflects that portion of the principal's office space, utilities, supplies, and compensation paid to other office employes which is incurred by the lobbyist in preparing for and making lobbying communications for the principal. These overhead amounts may be reported as a single, combined amount.

(5) All expenditures made and obligations incurred by a lobbyist for conducting nonexempt lobbying activities that are reimbursed by the principal, and which otherwise are not included in the amounts reported under s.13.68, Stats., and this section.

(6) The amount of expenditures referenced in ss.13.68(5) and 13.625(7), Stats., shall be set forth as the total expenditures made and obligations incurred for each officer or employe of the state, elected state official, or candidate for elective state office who was invited and did attend any regular meeting or bona fide social function sponsored by the principal, to the extent that an itemization is possible. Any portion of the amount expended which is not reasonably susceptible of itemization may be set forth as a single amount together with a statement of the number of beneficiaries of those expenditures or obligations.

SS2.07 Prohibited Practices. (1) For purposes of this section, "restricted recipient" means an officer or employe of the state, an elective state official, or a candidate for an elective state office.

(2) Except as otherwise provided by law, for purposes of s.13.625, Stats., a lobbyist or principal shall be deemed to furnish a thing of pecuniary value to a restricted recipient if the lobbyist or principal transfers title, possession, custody or control of the thing:

- (a) directly to the restricted recipient;
- (b) indirectly, through an intervening party, with the intent or expectation, and the result, that the restricted recipient is to receive the thing transferred; or
- (c) to an employer, spouse or minor child of the restricted recipient, or to an entity of which the restricted recipient, or the spouse or minor child thereof, owns or has majority controlling interest of the outstanding equity, voting rights, or outstanding indebtedness.

(3) Notwithstanding any other provision of law, it shall not be a prohibited practice for a lobbyist or principal to make a transfer under par. (2)(c) if the lobbyist or principal receives, in exchange from the person or entity to whom or which the thing was transferred, consideration equal to the fair market value of thing transferred.

SS2.08 Exceptions and Exemptions. (1) The items referred to in s.13.625(2), Stats., shall be deemed to be made available to the general public if:

- (a) They are made available to the general public on the same terms as they are made available to any officer or employe of the state, elective state official, or a candidate for elective state office; and
- (b) The conditions for or prerequisites to obtaining those items do not include being an officer or employe of the state, an elective state official or candidate for state office.

(2) The exemptions under s.13.70(1)(c) and (f), Stats., apply only to information that is reasonably responsive to a request referred to in those paragraphs. Information volunteered on subjects other than those covered by the request is not subject to the exemptions even though furnished at the same time that responsive information is furnished.

SS2.09 Miscellaneous. (1) For purposes of ss.13.62 through 13.74, Stats., and ch. SS2, a document is deemed to be filed with the secretary of state if:

- (a) It meets the form and content requirements of Chapter 13, subch.III, Stats., and this chapter; and
- (b) It has been received in the secretary's office in legible condition.

(2) A document must be entitled "Formal Opinion" or specifically state that it constitutes a formal opinion in order to qualify as one under s.13.685(6), Stats. Any other advice or assistance from the office of the secretary of state is not a formal opinion whether given orally or in writing and whether signed or unsigned.

(3) All forms required or permitted to be filed under Chapter 13, subch.III, Stats., and this chapter may be obtained from the office of the secretary of state.

(4) A blank space left uncompleted on the expense reporting forms filed with the secretary of state under s.13.68, Stats., shall be deemed to be a "zero" for purposes of computation or itemization.

Note: The mailing address of the office of the secretary of state is:

201 East Washington Avenue
GEF 1 Building, Room 271
Box 7848
Madison, WI 53702

EFFECTIVE DATE

This rule shall take effect on January 1, 1989, as provided in s.227.22(2)(b), Stats.

Dated: 062888

Agency: Douglas LaFollette
Douglas LaFollette
Secretary of State

DOUGLAS LA FOLLETTE



SECRETARY OF STATE
WISCONSIN

June 29, 1988

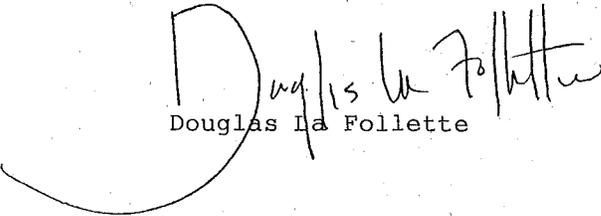
Orlan Prestegard
Revisor of Statutes Bureau
30 West Mifflin Street
Suite 702
Madison WI 53703

RE: CERTIFIED COPY OF CLEARINGHOUSE RULE 87-159

Dear Mr. Prestegard:

Enclosed please find for filing and publishing a certified copy of the Order promulgating Clearinghouse Rule 87-159, in accordance with s.227.20, Stats. If you have any questions regarding this matter, please contact me or my general counsel, Mark Saunders at 266-0182.

Sincerely,


Douglas La Follette

DLF/RA
Encl.