

LEGAL ISSUES FACING TECHNICAL COLLEGES

# ETHICS FOR BOARD MEMBERS

**Gary M. Ruesch**  
Quarles & Brady LLP, Milwaukee  
November 4, 2009

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ETHICS UPDATE

## PUBLIC POLICY OF STATE

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ETHICS UPDATE

It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.

Wis. Stat. Sec. 19.41(1)

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ETHICS UPDATE

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ETHICS UPDATE

Standards of Conduct; State Public Officials

Wis. Stats. 19.45(2)

(2) No state 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. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11 .

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ETHICS UPDATE

Who Is A State Public Official?

Wis. Stats. 19.42(13)(f)

(f) A member of a technical college district board or district director of a technical college, or any position designated as assistant, associate or deputy district director of a technical college.

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**ETHICS UPDATE**

**Standards of Conduct; State Public Officials**

Wis. Stats. 19.45(3)

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state 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 state public official. This subsection does not prohibit a state public official from engaging in outside employment.

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**ETHICS UPDATE**

**"Anything of Value"?**

Wis. Stats. 19.42(1)

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

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**ETHICS UPDATE**

**Standards of Conduct; State Public Officials**

Wis. Stats. 19.45(3m)

(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56 (3) .

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**ETHICS UPDATE**

**Standards of Conduct; State Public Officials**

Wis. Stats. 19.45(4)

(4) No state public official 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.

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**ETHICS UPDATE**

**Standards of Conduct; State Public Officials**

Wis. Stats. 19.42(7)

(7) "Immediate family" means:

(a) An individual's spouse; and

(b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

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**ETHICS UPDATE**

**Standards of Conduct; State Public Officials**

Wis. Stats. 19.45(5)

(5) No state public official may use or attempt to use the public position held by the public official to influence or gain unlawful benefits, advantages or privileges personally or for others.

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**ETHICS UPDATE**  
Standards of Conduct; State Public Officials  
Wis. Stats. 19.45(6)

(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity . . . 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 state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease.

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**ETHICS UPDATE**  
Conflict of interest prohibited  
Wis. Stats. 19.46

(1) No state public official may:

(a) 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.

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**ETHICS UPDATE**  
Conflict of interest prohibited  
Wis. Stats. 19.46

(1) No state public official may:

(b) 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.

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**ETHICS UPDATE**  
**Penalties**  
**Wis. Stats. 19.58**  
Fines of not less than \$100 nor more than \$5000 or imprisoned not more than one year in county jail  
For intentional violations, Class I Felony



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**ETHICS UPDATE**  
**Private interest in public contract prohibited**  
**Wis. Stats. 946.13**  
(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 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



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**ETHICS UPDATE**  
**Private interest in public contract prohibited**  
**Wis. Stats. 946.13**  
(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:  
(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.



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**ETHICS UPDATE**  
Private interest in public contract prohibited  
Wis. Stats. 946.13

(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.



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**ETHICS UPDATE**  
WTCS Administrative Code Requires:

TCS 6.06 (Personnel)

Each College is required to establish policies and procedures establishing a Code of Ethics for all district employees, including:

- outside employment
- conflicts of interests
- penalties for violations of code of ethics



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**ETHICS UPDATE**  
New WTCS Board Policy Revision  
Regarding Student Financial Aid and Lender Relations

Revised – 9/11/07 Policy No. 503

Policy requires each College to adopt policies which include prohibitions on employees accepting fees, revenue sharing or benefits from lenders in exchange for recommending lender



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## ETHICS UPDATE

Recent Opinions From the Ethics Board

- Governor's Use of Utility's Lambeau Luxury Suite violated ethics law
- Public official attending conference may accept educational or informational material if it is for the purpose of conveying it to the State or for the benefit of a state office/agency
- State official should not accept meal or drink offered at conference unless sanctioned by event's sponsor
- Gifts and Honoraria

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## ETHICS UPDATE

### CONFIDENTIALITY

Areas of Concern:

- 1) Student Confidentiality - Grades, Discipline, Physical/Mental Health
  - FERPA, ADA, Invasion of Privacy, Tort claims, Constitutional Claims (Due Process, Equal Protection)
- 2) Employee Confidentiality - Performance issues, physical/mental health, disability, financial, family information
  - HIPAA, ADA, Invasion of Privacy, Tort Claims, Defamation, Libel, Constitutional Claims (Due Process, Equal Protection)

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## ETHICS UPDATE

### CONFIDENTIALITY

Areas of Concern:

- 3) Other Closed Meeting Subjects - Reorganizations when discussing specific personnel, negotiations with Unions, Vendors, Other Contracts
- 4) Open Meetings Violations - Walking Quorums, Negative Quorums, Emails

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**ETHICS UPDATE  
CONFIDENTIALITY**

Areas of Concern:

5) Misconduct In Public Office - "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"

Penalty: Class I felony, fines up to \$10,000 and imprisonment not to exceed 3 years and 6 months.

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**ETHICS UPDATE**

When In Doubt, ASK!

Ethics Board  
WTCS System  
Your College's Attorney

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**ETHICS UPDATE**

How Can Your College Instill Ethics As An Institutional Priority?

- Set Standards From The Top
  - Define/Demonstrate Desired Behavior
  - Expect More than Minimal Compliance
- No Tolerance For Ethical Lapses
- Demand Ethical Behavior At All Levels of College

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LEGAL ISSUES FACING TECHNICAL COLLEGES

**ETHICS FOR  
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**Gary M. Ruesch**  
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