



LEGAL ISSUES
RELATING TO COUNTY GOVERNMENT

BEYOND CONFLICTS OF INTEREST

Understanding the Lesser-Known Doctrine of “Incompatibility”

by Jake Curtis and Andy Phillips, Attorneys, Attolles Law, s.c.

County officials in Wisconsin play a vital role in shaping the communities they serve. They are entrusted with the responsibility of making decisions that directly impact the lives of their constituents. However, amid the wide range of roles constituting “public service,” there are instances where seemingly unrelated positions may inadvertently give rise to conflicts of interest or contravene the common law doctrine of incompatibility. In this article, we delve into the concept of incompatibility and its implications for public officials in Wisconsin.

► Conflicts of interest in Wisconsin

Wisconsin has enacted a robust legal structure to address conflicts of interest among public officials. Public officials are legally mandated to disclose any financial interests or relationships that might be construed as conflicts of interest.¹ The code prohibits the use of an official’s position to obtain financial gain or anything of substantial value for themselves, their immediate family or affiliated organizations and likewise prohibits an official’s solicitation

or acceptance of anything of value if it could reasonably be expected to influence official action, such as voting on policy matters.² At its core, the statute aims to preserve the integrity of local government.

► Incompatibility in local government

While conflicts of interest primarily concern financial matters, the doctrine of incompatibility delves into an individual’s capacity to effectively fulfill a public role. Incompatibility arises when two offices or positions inherently conflict with each other due to various factors, including salary negotiations, supervisory roles and obligations to exercise independent judgment in the public interest.³ It becomes particularly apparent when one office possesses the authority to interfere with the duties of the other, such as when one is subordinate to, or subject to audit or review by, the second office. In such circumstances, where both positions are held by the same person, the intention for one to act as a check on the other would be thwarted.⁴ Importantly, incompatibility does not carry a

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direct legal penalty, but the mere acceptance of a second incompatible office automatically terminates the first, akin to a resignation.⁵

A salient example is the case of *Otradovec v. City of Green Bay*. This case involved an elected member of the city of Green Bay Common Council who retained his job as a residential appraiser in the Green Bay city assessor’s office under an indefinite-term contract.⁶ The common council had the authority to approve the terms and conditions of employment for residential appraisers, with the mayor appointing the city assessor, subject to the common council’s approval.⁷

Otradovec contended that, according to Wisconsin common law, only two public offices, not an office and a position, could be incompatible.⁸ However, the Court of Appeals disagreed with Otradovec’s interpretation, asserting that the common law doctrine of incompatibility extends to positions of public employment, not limited to public offices.⁹ Specifically, the court held that “[t]he common law doctrine of incompatibility extends to positions of public employment as well as public offices.”¹⁰

The court explained, “[t]he public detriment in having

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one person hold incompatible public offices can also exist when one person holds a public office and a position of public employment with duties that might conflict.”¹¹ The crux of the case was that Otradovec had the power to vote on contracts setting the terms of his employment and could vote on approval of the appointment of the city assessor in whose office he worked.¹² The court emphasized it did not matter that he was able to abstain from voting on such matters.¹³

► Conclusion

Even if there are no compatibility concerns, ethics concerns based on a real or perceived conflict of interest remain. As highlighted above, no public official may exploit their public position or office to secure financial gain or substantial benefits for themselves, their immediate

family or affiliated organizations.¹⁴ And a local public official may not “[u]se 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 ... or an organization with which the official is associated.”¹⁵

The Wisconsin attorney general has advised that public officials with private business interests related to a board’s activities may face additional conflicts of interest, distinct from those leading to incompatibility but equally serious in consequence.¹⁶ Therefore, it is critical that public servants faced with civil service opportunities remain acutely aware of their preexisting obligations.

As always, if you have specific questions related to ethics, conflicts of interest or incompatibility, please work closely with corporation counsel to determine the best course of action. If you have any questions surrounding this sensitive topic, please do not hesitate to contact the association or the authors at jcurtis@attolles.com or aphillips@attolles.com. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.

1. Wis. Stat. § 19.59(1)(a).
2. See Wis. Stat. §§ 19.59(1)(a)-(b).
3. 74 Op. Att’y Gen. 51, 52 [1985] (quoting 63A Am. Jur. 2d Public Officers and Employees § 78 [1984]).
4. Id.
5. 3 McQuillin Mun. Corp. § 12:112 [3d ed.] (citing State v. Hines, 194 Wis. 34, 215 N.W. 447 [1927]).
6. Id. at 394.
7. Id. at 394-95.
8. Id.
9. Id.
10. Id. at 396.
11. Id.
12. Id. at 396-97.
13. Id. at 397.
14. Wis. Stat. § 19.59(1)(a).
15. Wis. Stat. § 19.59(1)(c)2.
16. 77 Op. Att’y Gen. 150, 152 [1988].

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