

**VILLAGE OF GERMANTOWN APPLICATION FOR
REAPPOINTMENT TO A BOARD, COMMITTEE, OR COMMISSION**

(Please print clearly)

FULL NAME:

ADDRESS:

CITY, STATE, ZIP:

EMAIL ADDRESS:

PHONE NUMBER:

To which Board(s), Committee(s), or Commission(s) do you wish to be reappointed?

Signature of Applicant

Date

PLEASE RETURN THE APPLICATION AND A COPY OF VALID PHOTO ID TO:

Office of the Village Clerk, Donna Ott
N112W17001 Mequon Rd
Germantown, WI 53022
Email: dott@germantownwi.gov

VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI 53022
Phone: (262) 250-4740 Fax: (262) 253-8255
Employing Agency

AUTHORIZATION FOR RELEASE OF INFORMATION
(For official use only, not to be released to unauthorized persons)

I hereby empower an employee of the **Village of Germantown** or other authorized representative thereof bearing this release to, within one year of its date; obtain information and records pertaining to me from any or all of the following sources:

1. Municipal, State or Federal law enforcement agencies
2. Selective Service System
3. Any banking institution
4. Any place of business (for purpose of obtaining credit or employment data)
5. Credit rating bureaus or institutions maintaining individual credit rating files
6. Any previous employer
7. Present employer
8. Any school, college, university or other educational institution
9. Any law enforcement or jail officer

Exceptions to this blanket authorization

1. Any medical information in the possession of any source named above until subsequent to a conditional offer of employment (per Americans with Disabilities Act).
2. _____
3. _____

This release is executed to authorize **The Village of Germantown**, as a prospective employer, to obtain the above information. It is understood that said information shall be used only in consideration of my employment and shall not be further disseminated for any purpose. If employment is denied due to information obtained on a credit report, I understand that I can receive this information by calling toll free (800) 888-4213.

Full Name (Please Print)

Address (Street and Number) City State Zip

Date of Birth: _____ Sex: Male ____ Female ____

Driver's License Number: _____

E-Mail Address: _____ Phone: _____

Signature (Full Name)

Date

1.064 **CODE OF ETHICS.** (Cr. Ord. #16-91; Rep. & Recr. Ord. #8-93)

- (1) **DECLARATION OF POLICY.** The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a Code of Ethics for all Village officials and employees, whether elected or appointed, paid or unpaid, including members of boards, committees and commissions of the Village. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the Village and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the Village. The provisions and purpose of this code and such rules and regulations, as may be established, are hereby declared to be in the best interests of the Village.
- (2) **RESPONSIBILITY OF PUBLIC OFFICE.** Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the nation, State and municipality and to observe in their official acts the highest standards of integrity and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their prime concern. Their conduct in their official affairs must be and in their private affairs should be above reproach so as to foster respect for all government.
- (3) **DEDICATED SERVICE.** All officials and employees of the Village are expected to give support to official actions and programs of the Village. Appointive officials and employees shall adhere to the rules of work and performance established as the standard for their positions by the appropriate authority as set forth in the Village Code. Officials and employees shall not exceed their authority or breach the law or ask others to do so, and they shall work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.
- (4) **FAIR AND EQUAL TREATMENT.**
 - (a) Use of Public Property. No official or employee shall request or permit the use of Village-owned vehicles, equipment, materials or property for personal convenience or profit.
 - (b) Obligations to Citizens. No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.
- (5) **CONFLICT OF INTEREST.**
 - (a) Definitions.
 1. *Financial Interest.* Any interest which shall yield directly or indirectly, a monetary or other material benefit to the official or employee or to any person employing or retaining the services of the official or employee.
 2. *Personal Interest.* Any interest arising from blood or marriage relationships or from close business or political associations, whether or not any financial interest is involved.
 3. *Person.* Any person, corporation, partnership or joint venture.
 4. *Anything of Value.* Any money or property, favor, service, payment, advance forbearance, loan or promise of future employment for himself or for his immediate family.
 5. *Immediate Family.*
 - a. A person's spouse.

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- b. An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than ½ of his support from the individual or from whom the individual receives, directly or indirectly, more than ½ of his support.
- (b) Financial and Personal Interest Prohibited. No official or employee, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest contrary to the provisions of this section or would tend to impair his independence of judgment or action in the performance of his official duties.
- (c) Specific Conflicts Enumerated.
1. *Incompatible Employment*. No official or employee shall engage in or accept private employment or render service for private interest when such employment or service is inconsistent or in conflict with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties unless otherwise permitted by law and unless disclosures are made as hereinafter provided.
 2. *Disclosure of Confidential Information*. No official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Village nor shall such information be used to advance financial or other private interests.
 3. *Solicitation or Acceptance Prohibited*.
 - a. No official or employee shall solicit nor accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the official's or employee's vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the official or employee. Campaign contributions which are permitted and reported under Ch. 11, Wis. Stats., may be accepted.
 - b. No official or employee, or member of the official's or employee's immediate family, shall accept hospitality if, after consideration of the surrounding circumstances, it could reasonably be expected to influence the official's or employee's vote, official action or judgment. An official or employee should discourage any member of his immediate family from accepting hospitality under such circumstances. Participation in ground breakings, celebrations, grand openings, open houses, informational meetings, voter forums and similar events are excluded from this prohibition.
 4. *Representing Private, Personal or Financial Interests Before Village Agencies or Courts*. (Rep. & Recr. Ord. #21-93) No elected official, as defined in section 1.01 of this chapter, nor appointed official, as defined in section 1.02 of this chapter, nor employed official, as defined in section 1.03 of this chapter, shall appear on behalf of any private person other than himself, his spouse or minor children before any agency, board, commission, committee, council or department of the Village or before any court involving a case in which the Village has an interest. However, a Trustee may appear before Village agencies on behalf of the Trustee's constituents in the course of the Trustee's duties as a representative of the electorate or in the performance of public and civic obligations.

(6) **DISCLOSURE OF INTEREST IN LEGISLATION.**

- (a) Any member of the Village Board who has a financial interest or personal interest in any proposed legislation before the Village Board shall disclose on the record of the Board the nature and extent of such interest.
- (b) Any other official or employee who has a financial interest or personal interest in any proposed legislative action of the Village Board or any board, commission or committee upon which the official

or employee has any influence or input or of which the official or employee is a member that is to make a recommendation or decision upon any item which is the subject of the proposed legislative action shall disclose on the records of the Village Board or the appropriate board, commission or committee the nature and extent of such interest.

(7) **STATUTORY STANDARDS OF CONDUCT.** There are certain provisions of the Wisconsin Statutes which, while not set forth here in, are considered an integral part of any code of ethics. Accordingly, the provisions of the following sections of the statutes, as from time to time amended, are made a part of this Code of Ethics and shall apply to public officials and employees when ever applicable, to wit:

- (a) §946.10 Bribery of Public Officers and Employees
- (b) §946.11 Special Privileges From Public Utilities
- (c) §946.12 Misconduct in Public Office
- (d) §946.13 Private Interest in Public Contract Prohibited

(8) **ETHICS BOARD.**

(a) Membership. There is hereby created an Ethics Board consisting of 5 voting members and 2 alternates who shall serve without compensation unless the Village Board otherwise provides. The members of the Board shall be residents of the Village or full time employees of a business located in the Village or owners of real property located in the Village. The members shall not be elected officials, full time appointed officials or Village employees, nor shall they be currently serving on any other Village board or commission. Each member shall be appointed by the Village President and subject to confirmation by the Village Board. Terms of office shall be 3 years, except that when the initial appointments are made, one member shall be appointed for one year, 2 shall be appointed for 2 years and two for 3 years. The alternates shall be appointed for 3 year terms, except that when the initial appointments are made, one alternate shall be appointed for one year and one shall be appointed for 2 years. The alternates serve on the Board when one of the citizen members is unavailable. The Board shall elect its own Chairman and Vice Chairman. The Village Attorney shall furnish the Board legal assistance when necessary and when doing so does not present a conflict of interest to the Village Attorney. With the prior approval of the Village Board, the Ethics Board may retain independent counsel when the Village Attorney is unable to provide legal assistance to the Board. The Village Clerk shall serve as the Ethics Board Secretary.

(b) Powers and Duties.

1. The Ethics Board shall adopt and develop written rules which shall be submitted to the Village Board for approval. A copy of such rules shall be filed with the Village Clerk.
2. Any person to whom this section applies may apply, in writing, to the Board for an advisory opinion as to the interpretation and application of this section and shall be guided by the opinion rendered. Such person shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of this section before the advisory decision is rendered. No Trustee may attend a meeting of the Board unless requested to do so by the Board. Meetings for deliberations and action upon such applications shall not be open to the public. Opinions rendered by the Board shall be in writing. Records of the Board's opinions, opinion requests and investigations of violations shall be closed to public inspection. The Board, however, may make such records public with the consent of the individual requesting the advisory opinion or in the event that individual makes public any portion of the opinion. In the event the Board deems it necessary or appropriate, it may request an advisory opinion from the Village Attorney. The Board may, if it determines that its opinion in response to a request for an advisory opinion as to the interpretation or application of a provision of this Code of Ethics to certain fact situations would be of value to other officials or employees in terms of providing guidance or

guidelines in future fact situations of a same or similar nature, issue a summary opinion setting forth what it deems to be appropriate conduct in such a manner that it does not disclose the identity of the individual whose original request prompted the issuance of such summary opinion.

3. All complaints shall be in writing and verified and shall state the name of the official or employee alleged to have committed a violation of this section and the particulars thereof. Complaints shall be addressed to the Ethics Board and filed with the Village Clerk.
4. Within 14 days after the filing of a properly verified complaint, the Board shall meet to accept the complaint. Within 3 days after accepting the complaint, the Board shall mail a copy of the complaint to the accused by certified mail.
5. Following the acceptance of a verified complaint, the Board may make preliminary investigations with respect to alleged violation of this section. No preliminary investigation of the activities of any official or employee may be initiated unless such official or employee is notified in writing by certified mail. The notice shall state the exact nature and purpose of the investigation, the individual's specific actions or activities to be investigated and a statement of such person's due process rights. The preliminary investigation shall be completed within 30 days from acceptance of a verified complaint, except that the Board may extend that period an additional 30 days with like notice to the official or employee and to the complainant.
6. If, after such investigation, the Board finds that probable cause does not exist for believing the allegations of the complaint or believing that the conduct complained of violates the Ethics Code, it shall dismiss the complaint. The Board shall promptly notify the accused and the complainant of its decision in writing by certified mail. The Board's decision to dismiss a complaint shall be final. The same complaint or a complaint which is substantially the same shall not be reconsidered by the Board unless the complainant provides additional material information which was not available to the complainant at the time the original complaint was filed and which, if true, would probably change the outcome. The Board's decision to reconsider or not to reconsider shall be final.
7. If, after such investigation, the Board finds that probable cause exists for believing the allegations of the complaint, it shall conduct a hearing on the matter which shall be held not more than 30 days after such finding. The Board shall give the accused at least 20 days notice of the hearing date. Such hearings shall be at open session unless the accused petitions for a hearing closed to the public. The rules of criminal evidence shall apply to such hearings. All evidence, including certified copies of records and documents which the Board considers, shall be fully offered and made part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
8. During all stages of any investigation or proceeding conducted under this section, the accused shall be entitled to be represented by counsel of his own choosing.
9. The accused or his representative shall have an adequate opportunity to examine all documents and records to be used at the hearing under subparagraph 7., above, at a reasonable time before the date of the hearing as well as during the hearing to bring witnesses, establish all pertinent facts and circumstances and to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
10. The Board shall have the power to compel the attendance of witnesses and to issue subpoenas granted other boards and commissioners under §885.01(3), Wis. Stats.
11. Upon conclusion of the hearing, the Board shall file its decision within 5 days, in writing, signed by all participating Board members, with findings of fact, conclusions of law concerning the

propriety of the conduct of the official or employee and, if appropriate, refer the matter to the Village Board or other proper authority with a recommendation for suspension, removal from office or employment, or other disciplinary action.

12. A four to one vote of the Board shall be required for any action taken by the Board with the exception that action taken by the Board, pursuant to a hearing conducted under subparagraph (8)(b)7., above, shall require a unanimous vote.
- (9) **APPLICABILITY.** This section shall be operative in all instances covered by its provisions, except when superseded by an applicable statutory provision and statutory action, or when the application of a statutory provision is discretionary but determined by the Board to be more appropriate or desirable.
- (10) **PENALTY AND SANCTIONS.** Violation of any provision of this section may constitute a cause for suspension, removal from office or employment or other disciplinary action. Sanctions, including any disciplinary action, that may affect employees covered under a labor agreement will be consistent with the terms and conditions set forth in the applicable labor agreement.
- (11) **DISTRIBUTION OF ETHICS CODE.** (Rep. & Recr. Ord. #11-03)
- (a) All public officials, Village employees, and citizen members of boards and commissions shall receive a copy of the Village Ethics Code and file with the Village Clerk the Ethics Code Statement which is incorporated by reference. Public officials and citizen members will complete the form within 30 days of appointment or election, and thereafter upon reappointment or reelection. All Village employees, including seasonal employees, will complete the form within 2 weeks of their employment or rehire.
- (b) The Village Clerk shall cause a copy of any substantive changes to this Code to be distributed to all public officials, Village employees and citizen members of boards and commissions within 30 days of its enactment. All public officials, Village employees and citizen members shall file with the Village Clerk the Ethics Code Statement and acknowledge receipt of any revisions to the Ethics Code.
- (c) Code of Ethics Statement:
- "I have received a copy of the Village of Germantown Ethics Code. I understand the necessity of protecting the reputation of the Village of Germantown, avoiding conflicts of interest, use of village property and release of confidential information.*
- "I, the undersigned have read, and have been told that I am to become cognizant, knowledgeable and understand the contents of the Village of Germantown Ethics Code, including the attached State Statutes. I have been given the opportunity to ask questions that I may have about the Ethics Code."

State law reference—Code of ethics for public officers and employees, Wis. Stats § 19.41 et seq.

946.03 CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

Updated 21–22 Wis. Stats. 2

learning that the premises are being so used, permits such use to be continued is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.06 Improper use of the flag. (1) Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag; or

(b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of such flag; or

(c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) Uses the flag for commercial advertising purposes.

(2) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are no unauthorized words or designs on such flag and provided the flag is not connected with any advertisement.

(3) In this section “flag” means anything that is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of them.

History: 1977 c. 173; 2003 a. 243.

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed. The context imbued the display with protected elements of communication. *Spence v. Washington*, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).

The Washington flag desecration statute held unconstitutional in *Spence*, 418 U.S. 405 (1974), when applied to a mere display of an altered flag in the absence of a disturbance of the peace, was identical in all essential ways to this section. *Koser v. County of Price*, 834 F. Supp. 305 (1993).

SUBCHAPTER II

BRIBERY AND OFFICIAL MISCONDUCT

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer’s or employee’s lawful duty transfers or promises to the officer or employee or on the officer’s or employee’s behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer’s or employee’s lawful duty.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Circumstantial evidence supported an inference that the defendant intended to influence a public official’s actions. *State v. Rosenfeld*, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). *State v. Sammons*, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities.

(1) Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any

person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) “Free pass” means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty.

(b) “Privilege” means anything of value not available to the general public, but does not include compensation or fringe benefits provided as a result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:

1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.

2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.

(c) “Public utility” has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109; 2015 a. 117; 2017 a. 365 s. 111.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class I felony:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer’s or employee’s office or employment within the time or in the manner required by law; or

(2) 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; or

(3) Whether by act of commission or omission, in the officer’s or employee’s capacity as such officer or employee exercises a

discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person who is not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03–0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03–0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03–0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03–0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03–0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03–0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03–0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03–0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine. Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03–0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03–0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03–0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03–0106.

Sub. (3) provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. State v. Jensen, 2007 WI App 256, 06–2095. See also State v. Schultz, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06–2121.

946.13 Private interest in public contract prohibited.

(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 officer's or employee's capacity as such officer or employee 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; or

(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.

(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.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2 percent of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than \$10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

946.13 CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

Updated 21–22 Wis. Stats. 4

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2 percent of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

(12) (a) In this subsection:

1. "Research company" means an entity engaged in commercial or nonprofit activity that is related to research conducted by an employee or officer of the system or to a product of such research.

2. "System" means the University of Wisconsin System.

(b) Subsection (1) does not apply to a contract between a research company and the system or any institution or college campus within the system for purchase of goods or services, including research, if the interest that a system employee or officer has in the research company has been evaluated and addressed in a management plan issued by the individual or body responsible for evaluating and managing potential conflicts of interest and the management plan complies with the policy adopted under par. (d).

(d) The board shall adopt a policy specifying the contents required for a management plan under par. (b).

History: 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 417; 2009 a. 28; 2019 a. 36.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co-owner of the airport when he was appointed pursuant to advice and approval of the county corporation counsel. *State v. Davis*, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense. It does not include the element of corrupt motive. *State v. Stoehr*, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in, or have negotiated in his private capacity for, a position that had not yet been posted. *State v. Venema*, 2002 WI App 202, 257 Wis. 2d. 491, 650 N.W.2d 898, 01–2502.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education [now Technical college] may not bid on and contract for the construction of a building project for a vocational–technical district that would entail expenditures exceeding \$2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the board. 60 Atty. Gen. 310.

Discussing conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

This section applies to county board or department purchases aggregating more than \$5,000 from a county supervisor–owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of \$5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a third person who obtained a loan under the program. 76 Atty. Gen. 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors, or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

A municipality's zoning decision is not a contract under sub. (1) (a), and therefore the statute does not apply to an official's participation in a zoning decision. OAG 9–14.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity

directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.16 Judicial officer collecting claims. Any judicial officer who causes to be brought in a court over which the officer presides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

History: 1977 c. 173.

946.17 Corrupt means to influence legislation; disclosure of interest. Any person who gives or agrees or offers to give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

History: 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

946.18 Misconduct sections apply to all public officers. Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

History: 1977 c. 278; 1979 c. 110.

SUBCHAPTER III

PERJURY AND FALSE SWEARING

946.31 Perjury. (1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

- A court;
- A magistrate;
- A judge, referee or court commissioner;
- An administrative agency or arbitrator authorized by statute to determine issues of fact;
- A notary public while taking testimony for use in an action or proceeding pending in court;
- An officer authorized to conduct inquests of the dead;
- A grand jury;
- A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

History: 1977 c. 173; 1979 c. 110; 2001 a. 109.

An arbitrator selected from a list provided by the Wisconsin Employment Relations Commission is authorized by s. 111.10 to arbitrate as provided in ch. 298 [now ch. 788] and so is "authorized by statute" within meaning of sub. (1) (d). *Layton School of Art & Design v. WERC*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

Perjury consists of a false statement that the defendant knew was false, was made under oath in a proceeding before a judge, and was material to the proceeding. Materiality is determined by whether the trial court could have relied on the testimony in making a decision, not on whether it actually did. *State v. Munz*, 198 Wis. 2d 379, 541 N.W.2d 821 (Ct. App. 1995), 95–0635.

A defendant may be charged with multiple counts of perjury based on testimony given in the same proceeding when each charge requires proof of an additional fact that the others do not. *State v. Warren*, 229 Wis. 2d 172, 599 N.W.2d 431 (Ct. App. 1999), 99–0129.

Issue preclusion does not bar the prosecution of a defendant for perjury who was tried and acquitted on a single issue when newly discovered evidence suggests that the defendant falsely testified on the issue. The state must show that: 1) the evidence came to the state's attention after trial; 2) the state was not negligent in failing to discover the evidence; 3) the evidence is material to the issue; and 4) the evidence is not merely cumulative. *State v. Canon*, 2001 WI 11, 241 Wis. 2d 164, 622 N.W.2d 270, 98–3519.

Perjury prosecutions after acquittals. *Shellenberger*. 71 MLR 703 (1988).

946.32 False swearing. (1) Whoever does either of the following is guilty of a Class H felony:

(a) Under oath or affirmation or upon signing a statement pursuant to s. 887.015 makes or subscribes a false statement which he or she does not believe is true, when such oath, affirmation, or statement is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action.

(b) Makes or subscribes 2 inconsistent statements under oath or affirmation or upon signing a statement pursuant to s. 887.015 in regard to any matter respecting which an oath, affirmation, or statement is, in each case, authorized or required by law or required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action, under circumstances which demonstrate that the witness or subscriber knew at least one of the statements to be false when made. The period of limitations within which prosecution may be commenced runs from the time of the first statement.

(2) Whoever under oath or affirmation or upon signing a statement pursuant to s. 887.015 makes or subscribes a false statement which the person does not believe is true is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109; 2009 a. 166.

This section applies to oral statements. The mere fact that a statement is permitted by law does not mean it is “authorized by law” within meaning of sub. (1) (a). *State v. Devitt*, 82 Wis. 2d 262, 262 N.W.2d 73 (1978).

The reference to the statute of limitations in sub. (1) (b) does not make it an element of the offense. The statute of limitations is an affirmative defense and is subject to tolling under s. 939.74. *State v. Slaughter*, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996), 95–0141.

What is to be “authorized or required” under sub. (1) (b) is the oath itself, not the matter respecting which the oath is taken. *State v. Slaughter*, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996), 95–0141.

SUBCHAPTER IV

INTERFERENCE WITH LAW ENFORCEMENT

946.40 Refusing to aid officer. (1) Whoever, without reasonable excuse, refuses or fails, upon command, to aid any person known by the person to be a peace officer is guilty of a Class C misdemeanor.

(2) This section does not apply if under the circumstances the officer was not authorized to command such assistance.

History: 1977 c. 173.

Under s. 343.305, hospital personnel must administer a blood alcohol test and report the results at the request of an officer, subject to the penalty under this section. 68 Atty. Gen. 209.

In certain circumstances, a peace officer may command medical staff at a hospital or clinic to gather evidence from a sexual assault victim. 72 Atty. Gen. 107.

946.41 Resisting or obstructing officer. (1) Except as provided in subs. (2m) and (2r), whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority is guilty of a Class A misdemeanor.

(2) In this section:

(a) “Obstructs” includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

(b) “Officer” means a peace officer or other public officer or public employee having the authority by virtue of the officer’s or employee’s office or employment to take another into custody.

(c) “Soft tissue injury” means an injury that requires medical attention to a tissue that connects, supports, or surrounds other structures and organs of the body and includes tendons, ligaments, fascia, skin, fibrous tissues, fat, synovial membranes, muscles, nerves, and blood vessels.

(2m) Whoever violates sub. (1) under all of the following circumstances is guilty of a Class H felony:

(a) The violator gives false information or places physical evidence with intent to mislead an officer.

(b) At a criminal trial, the trier of fact considers the false information or physical evidence.

(c) The trial results in the conviction of an innocent person.

(2r) Whoever violates sub. (1) and causes substantial bodily harm or a soft tissue injury to an officer is guilty of a Class H felony.

(2t) Whoever violates sub. (1) and causes great bodily harm to an officer is guilty of a Class G felony.

(3) Whoever by violating this section hinders, delays or prevents an officer from properly serving or executing any summons or civil process, is civilly liable to the person injured for any actual loss caused thereby and to the officer or the officer’s superior for any damages adjudged against either of them by reason thereof.

History: 1977 c. 173; 1983 a. 189; 1989 a. 121; 1993 a. 486; 2001 a. 109; 2009 a. 251; 2011 a. 74.

The state must prove that the accused knew that the officer was acting in an official capacity and knew that the officer was acting with lawful authority when the accused allegedly resisted or obstructed the officer. *State v. Lossman*, 118 Wis. 2d 526, 348 N.W.2d 159 (1984).

Knowingly providing false information with intent to mislead is obstruction as a matter of law. *State v. Caldwell*, 154 Wis. 2d 683, 454 N.W.2d 13 (Ct. App. 1990).

No law allows officers to arrest for obstruction on a person’s refusal to give the person’s name. Mere silence is insufficient to constitute obstruction. *Henes v. Morrissey*, 194 Wis. 2d 338, 533 N.W.2d 802 (1995).

Fleeing and hiding from an officer may constitute obstructing. *State v. Grobstick*, 200 Wis. 2d 242, 546 N.W.2d 187 (1996), 94–1045.

There is no exculpatory denial exception under this section. The statute criminalizes all false statements knowingly made and with intent to mislead the police. The state should have sound reasons for believing that a defendant knowingly made false statements with intent to mislead the police and not out of a good-faith attempt to defend against accusations of a crime. The latter can never include the former. *State v. Reed*, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315, 03–1781.

“Lawful authority,” as that term is used in sub. (1), requires that police conduct be in compliance with both the federal and state constitutions, in addition to any applicable statutes. *State v. Ferguson*, 2009 WI 50, 317 Wis. 2d 586, 767 N.W.2d 187, 07–2095.

946.415 Failure to comply with officer’s attempt to take person into custody. (1) In this section, “officer” has the meaning given in s. 946.41 (2) (b).

(2) Whoever intentionally does all of the following is guilty of a Class I felony:

(a) Refuses to comply with an officer’s lawful attempt to take him or her into custody.

(b) Retreats or remains in a building or place and, through action or threat, attempts to prevent the officer from taking him or her into custody.

(c) While acting under pars. (a) and (b), remains or becomes armed with a dangerous weapon or threatens to use a dangerous weapon regardless of whether he or she has a dangerous weapon.

History: 1995 a. 93; 2001 a. 109.

This section delineates one crime: a suspect’s armed, physical refusal to be taken into custody. It can be committed by action or threat, which are alternative ways of threatening an officer to avoid being taken into custody. A jury instruction requiring unanimity on which occurred is not required. *State v. Koeppen*, 2000 WI App 121, 237 Wis. 2d 418, 614 N.W.2d 530, 99–0418.

946.42 Escape. (1) In this section:

(a) 1. “Custody” includes without limitation all of the following:

a. Actual custody of an institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02

VILLAGE OF GERMANTOWN

ETHICS CODE STATEMENT AND ACKNOWLEDGMENT OF RECEIPT OF REVISIONS

I have received a copy of the Village of Germantown Ethics Code (Revised on July 7, 2003 by Ordinance No. 11-03). I understand the necessity of protecting the reputation of the Village of Germantown, avoiding conflicts of interest, use of village property, and release of confidential information.

I, the undersigned have read and have been told that I am to become cognizant, knowledgeable, and understand the contents of the Village of Germantown Ethics Code, including the attached State Statutes. I have been given the opportunity to ask questions that I may have about the Ethics Codes.

Printed Name

Signature of Applicant

Date