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## CORRESPONDENCE MEMORANDUM

**DATE:** October 16, 2014  
**TO:** Deferred Compensation Board  
**FROM:** David H. Nispel, General Counsel  
Dan Hayes, Attorney

**SUBJECT:** Compatibility of Trustee Responsibilities under Wis. Stat. § 40.01(3)

The Office of Legal Services was asked whether Chapter 40 of the Wisconsin Statutes allows Deferred Compensation Board members to participate in voting or other board action on issues, such as the allocation of reimbursements, which involve funds the board member invests in as a participant in the Wisconsin Deferred Compensation (WDC) program. We believe that such involvement is allowed by statute.

Wis. Stat. § 40.01(3) states in relevant part:

Compatibility of trustee responsibilities. Membership on the...deferred compensation board...shall not be incompatible with any other public office. The board members and the employees of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter....

The purpose of this statutory provision is to allow the boards to function without frequent recusals of board members. All five of the boards attached to the Department of Employee Trust Funds have a large number of members who are participants in the Wisconsin Retirement System. Not allowing these board members to be involved in actions related to benefit programs in which they participate would cause a myriad of difficulties for the boards, such as reaching a quorum to take a vote.

However, the statute does prohibit board members from taking action that directly affects their specific benefit, credit, claim or application. Wis. Stat. § 40.01(3) goes on to state:

Reviewed and approved by A. John Voelker, Deputy Secretary

Electronically Signed 10/20/14

Board	Mtg Date	Item #
DC	11.4.14	9

However, any board member or employee of the department is expressly prohibited from participating in decisions directly related to a specific benefit, credit, claim or application of the person....

We interpret this language as applying to participation in decisions directly related to a board member's individual benefit, as opposed to decisions that affect a broad class of participants, one of which is the board member. For example, a board member could not participate in a decision on his or her own appeal. However, participation would be allowed in a decision affecting an entire category of participants, such as allocating WDC fund reimbursements back to participants in that fund, even if the board member is one of the participants.

Department staff will be available at the meeting to discuss this memo and answer questions.