

1721 BRIBERY: TRANSFERRING PROPERTY TO A PUBLIC OFFICER TO INFLUENCE A DECISION — § 946.10(1)**Statutory Definition of the Crime**

Section 946.10(1) of the Criminal Code of Wisconsin is violated by one who, with the intent to influence the conduct of any public officer¹ in relation to any matter which by law is pending or might come before the officer in the officer's official capacity,² transfers³ property⁴ to a public officer which the officer is not authorized to receive.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. (Name of officer) was a public officer.
A (title of officer) is a public officer.⁵
2. The defendant transferred property to (name of officer).⁶
3. (Name of officer) was not authorized to receive the property for the performance of official duties.⁷
4. The defendant intended to influence the conduct of (name of officer) in relation to any matter which by law was pending or might have come before (name of officer) in an official capacity.

"Intent to influence" means that the defendant had the mental purpose to influence the conduct of (name of officer).⁸

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of bribery have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1721 was originally published in 1966 and revised in 1996. This revision was approved by the Committee in December 2008 and involved adoption of a new format and nonsubstantive changes to the text.

There are two instructions for violations of subsec. (1) of § 946.10: Wis JI Criminal 1720 is for offering a bribe with intent to "induce a public officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty"; Wis JI Criminal 1721 is for offering a bribe 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."

The instruction has selected from the several alternatives offered by the statutory definition of the offense in the interest of providing a clearer and more easily understood model. Wis JI Criminal 1721 uses "public officer" instead of "public employee," "transfers" instead of "promises," and "property" instead of "personal advantage." Where necessary, of course, the instruction should be modified to use the appropriate alternative.

1. The instruction is drafted for cases involving "public officer." The statute also applies to a "public employee." Both terms are defined in § 939.22(30). See note 5, below.

2. The instruction uses the term "official capacity" instead of the statute's phrase: "in the officer's or employee's capacity as such officer or employee." No change in meaning is intended.

3. The instruction is drafted for cases involving the transfer of property. The statute also applies to promises to transfer.

4. The instruction is drafted for cases involving transfer of property. The statute also covers transfer or promise of any "personal advantage."

5. In the Committee's judgment, the jury may be told, for example, that a member of the county board is a public officer. It is still for the jury to be satisfied that, in fact, the individual was a member of the county board.

"Public officer" and "public employee" are defined as follows in § 939.22(30):

A "public officer" is any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units.

A "public employee" is any person, not an officer, who performs any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.

A juror is a "public employee" for purposes of § 946.10. State v. Sammons, 141 Wis.2d 833, 417 N.W.2d (Ct. App. 1987).

6. The wording of § 946.10 is essentially the same as that proposed in the 1953 draft of the revised Criminal Code. The Comment to the bribery statute in the 1953 draft included the following:

The bribe may be either property or a personal advantage, which covers anything that can be used to bribe someone. "Personal advantage" includes such things as a job or some social advancement.

1953 Report on the Criminal Code, page 171.

7. The Comment to the bribery statute in the 1953 draft of the Criminal Code revision (see note 6, supra) included the following:

. . . . The requirement that the property or personal advantage be one which the actor is not authorized to receive was made to exclude the case of the officer or employee who is on a fee basis and who might come within the wording of the statute because the fee is given to influence him to perform certain acts in his official capacity.

1953 Report on the Criminal Code, page 171.

8. Under the Criminal Code, the phrase "with intent to" means that the defendant either has a purpose to do the thing or cause the result specified or is aware that his or her conduct is practically certain to cause that result. See § 939.23(4) and Wis JI-Criminal 923A and 923B.

For a discussion of the sufficiency of the evidence on the "intent to influence" element, see State v. Rosenfeld, 93 Wis.2d 325, 286 N.W.2d 596 (1980).