

ETHICAL PRACTICES BOARD

First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

The following publication does not identify the requester of the advisory opinion, which is nonpublic data under Minn. Stat. § 10A.02, subd. 12(b)

RE: Potential Conflicts of Interest for Public Official

ADVISORY OPINION # 237

SUMMARY

A potential conflict of interest under Minn. Stat. § 10A.07 arises only when an official's financial interests or the financial interests of an associated business are substantially affected by an action or decision taken by an official in the conduct of the official's duties. In the absence of any associated business or financial interest, an official's action or decision will not raise a potential conflict of interest issue.

FACTS

As a public official, you ask the Ethical Practices Board ("Board") for an advisory opinion based on the following statement of facts:

1. You are a legislator, which makes you a public official as defined in Minn. Stat. § 10A.01, subd. 18. You are also a member of a state board whose members are defined as public officials. As a public official, you are subject to the provisions of Minn. Stat. § 10A.07.
2. The state board on which you serve unanimously voted to grant a package of financial incentives to a company in order to convince it to locate a new facility in Minnesota.
3. At the time of the vote, and presently, you have no financial interest in, or relationship with, this new company.
4. You have national, regional, and local contacts with individuals or entities which may be interested in the products to be offered by the new Minnesota company. The new

company has expressed interest in retaining you on a compensated basis to assist it in making national, regional, and local business contacts.

5. Because state funds are included in the financial incentive package awarded to the new company, there is a possibility that compensation you would receive from the company might be viewed as coming from those state funds.
6. You are concerned that a compensated contractual or employment relationship with the company may raise conflict of interest issues.

ISSUE

Would a compensated contract or employment relationship with the company described in the facts give rise to conflict of interest issues under Minnesota Statutes Chapter 10A?

OPINION

No, entry into the contract or employment relationship you describe, in itself, would not give rise to conflict of interest issues under Minnesota Statutes Chapter 10A. However, your proposed association with the company could create future potential conflicts of interest.

Minn. Stat. § 10A.07 is the only provision of Minnesota Statutes Chapter 10A which deals with conflicts of interest. Under its limited provisions, conflicts of interest arise only in the context of an official being called upon to take an action or make a decision. A potential conflict of interest exists if the action to be taken or the decision to be made would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than the effect on others in the same business classification, profession, or occupation.

Your action in awarding the financial incentive package to the company was taken at a time when you had no financial relationship with the company (it was not an associated business of yours as defined in Minn. Stat. § 10A.01, subd. 4 and you had no financial interest in it as defined in Minn. Rules 4515.0100, subp. 5); therefore, no potential conflict of interest existed.

Likewise, under Minn. Stat. § 10A.07, a potential conflict of interest would not arise as a result of your acceptance of a compensated relationship with the company. Your acceptance of a relationship with the company does not constitute an official action or decision on your part. Additionally, until after you accept a compensated relationship with the company, it will not be an associated business of yours. Thus, the two elements necessary to create a potential conflict of interest under Minn. Stat. § 10A.07 are missing. This is true regardless of whether or not state funds previously granted to the company would be used to pay your compensation.

If you accept compensation of more than \$50 in a month from the company, it will then be an associated business of yours. In that event, if you are called upon in the future to take action or make a decision on matters peculiar to the company, as opposed to general regulatory matters applicable to all companies, a potential conflict of interest could arise. This situation could occur in your capacity as a legislator or as a member of the state board on which you serve.

If a potential conflict of interest arises, you must prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict.

If the potential conflict arises as the result of a legislative action or decision you are called upon to make, you must deliver this statement to the President of the Senate. If insufficient time is available to provide the written notice, the same information must be communicated orally. At your request, the senate may excuse you from taking part in the action or decision in question.

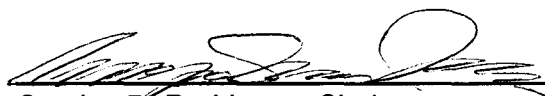
If the potential conflict of interest arises as the result of an action or decision you are called upon to make in your capacity as a board member, you must prepare the statement described above. While Minn. Stat. § 10A.07 does not specify to whom a board member must deliver the statement, it is the Board's opinion that to make the statement meaningful, you should deliver it to the chair of the board on which you serve.

As a board member, you must abstain, if possible, from making a decision or taking action which creates a potential conflict of interest. You abstain by assigning the matter to a subordinate, if possible, or by requesting the appointing authority to designate another to determine the matter. In either case, you would not chair a meeting, participate in a vote, or offer any motion or discussion on the matter giving rise to the potential conflict of interest. Minn. Rules part 4515.0500.

If you are not permitted or are otherwise unable to abstain from action in connection with the matter, you must file a statement describing the potential conflict and the action taken. This statement must be filed with the Board within one week of taking the action.

This opinion is specifically limited to interpretation of Minn. Stat. § 10A.07 as it relates to conflict of interest issues you raise. While your request expresses concerns beyond the scope of Minnesota Statutes Chapter 10A, the Board expresses no opinion on questions of public perception relating to perceived conflicts of interest; legislative rules or customs which may have application; or the application of statutes other than those which make up Minnesota Statutes Chapter 10A.

Issued: 5-31-96


Carolyn D. Rodriguez, Chair
Ethical Practices Board

CITED AUTHORITIES

MINNESOTA STATUTES

10A.01 DEFINITIONS.

Subdivision 1. For the purposes of sections 10A.01 to 10A.34, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

Subd. 4. "Associated business" means any association in connection with which the individual is compensated in excess of \$50 except for actual and reasonable expenses in any month as a director, officer, owner, member, partner, employer or employee, or is a holder of securities worth \$2,500 or more at fair market value.

10A.07 CONFLICTS OF INTEREST.

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, shall take the following actions:

(1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;

(2) deliver copies of the statement to the official's immediate superior, if any; and

(3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official shall orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior shall assign the matter, if possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official shall abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official shall file a statement describing the potential conflict and the action taken. A public official shall file the statement with the board and a local official shall file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

Subd. 3. Interest in contract; local officials. This section does not apply to a local official with respect to a matter governed by sections 471.87 and 471.88.

MINNESOTA RULES

4515.0100 DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to this chapter and Minnesota Statutes, section 10A.07. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

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Subp. 5. Financial interest. "Financial interest" means any ownership or control in an asset which has the potential to produce a monetary return.

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4515.0500 ABSTENTION.

Subpart 1. Nonlegislator. A public official who is not a legislator or a member of the governing body of a metropolitan governmental unit and who has a potential conflict of interest and who does not have an immediate superior shall abstain from the matter, if possible, by assigning the matter to a subordinate for disposition or requesting the appointing authority to designate another to determine the matter. In such a case, the official shall not chair a meeting, participate in any vote, or offer any motion or discussion on the matter giving rise to the potential conflict of interest.