

**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 conflict of interest for legislator**

**ADVISORY OPINION # 264**

**SUMMARY**

A legislator's vote which does not affect the legislator's financial interests, or those of an associated business of the legislator, does not create a potential conflict of interest under Minn. Stat. § 10A.07.

**FACTS**

As a legislator, and therefore a public official as defined in Minnesota Statutes, chapter 10A, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. In addition to being a legislator, you are an employee of a Minnesota city.
2. One of your responsibilities as a city employee is to serve as the executive director of an independent non-profit corporation engaged in youth programs. You are not paid separately by the non-profit for your work on its behalf.
3. The non-profit corporation is governed by a board of directors which includes high ranking executives of certain Minnesota businesses. Two of these executives are directly responsible for fundraising for the non-profit corporation. In addition, the businesses which employ these executives provide benefits to the non-profit corporation and directly sponsor some of its activities.
4. As executive director of the non-profit corporation, you work closely with these supporting businesses and their representatives. You do not receive compensation from, nor do you own securities in, these businesses.
5. As a legislator, you may be called upon to vote on measures which would directly affect the financial interests of these supporting businesses.

## ISSUE

Does a potential conflict of interest arise under Minn. Stat. § 10A.07 for a public official who is the executive director of a nonprofit corporation (although paid by another entity for these services) and who is called upon to vote on a matter which will affect the financial interests of a business which supports the non-profit corporation?

## OPINION

No. The non-profit corporation is not an associated business of the official, because it is not a source of compensation for the official, nor does the official own securities in it. Minn. Stat. § 10A.01, subd. 4. For the same reasons, the businesses providing support to the non-profit corporation are not associated businesses of the official.

A potential conflict of interest arises under Minn. Stat. § 10A.07 only when a public official's vote would affect the financial interests of the official or those of an associated business.

This opinion is limited to interpretation of the conflict of interest provisions of Minn. Stat. § 10A.07. Your request indicates that you have general concerns about how your vote in the described matter may be construed by others. That issue is not within the scope of Minnesota Statutes Chapter 10A and the Board expresses no opinion on it.

Issued: 4-25-97

  
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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.