

State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE  
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON-PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Potential Conflict of Interest From an Associated Business.**

**ADVISORY OPINION 345**

**SUMMARY**

Serving on both a state board and as an employee of an organization that receives funding from organizations that are regulated by the state board creates the potential for a conflict of interest. For an action or decision of a board member to be a conflict of interest the board member, or an organization that employs the board member, must benefit from the action or decision to a greater extent than any other individual or organization in the same business, profession, or occupation.

**FACTS**

As the Executive Director of a state board whose members are public officials, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The state board promulgates administrative rules, issues licenses, and can impose penalties for violations of statutes or rules.
2. An organization not licensed by the state board has hired a board member to serve as its executive director. As executive director the board member will receive compensation of approximately \$6,000 to \$9,600 annually.
3. The organization receives funding from entities that are licensed and regulated by the state board.

**ISSUE ONE**

Will serving as a member of the state board and as the executive director of the organization create a conflict of interest under the provisions of Chapter 10A?

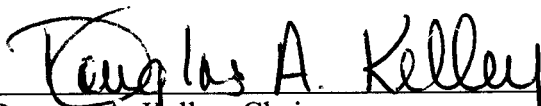
## OPINION

In determining if there is a conflict of interest that requires a public official to take the steps provided in Minn. Stat. §10A.07, two issues must be considered, 1) is the relationship in question covered by the provisions of the statute, and 2) will the specific action or decision of the public official constitute a conflict of interest? From the facts provided serving as the executive director of the organization makes the organization an "associated business" of the board member. This is because an associated business is defined in Minn. Stat. §10A.01, subd. 5, as any association that pays an individual more than \$50 in any month for compensation as service as a director or employee of the association. Any action or decision made by the board member that will substantially affect the financial interest of an associated business, regardless of whether there is a direct impact on the compensation or personal financial interests of the board member, is an action that must be evaluated as a potential conflict of interest.

For the specific action or decision of the board member to present a conflict of interest it must affect the financial interests of the board member or of the organization more than any other individual or organization in a similar business classification, profession or occupation. Any action or decision that does not meet that threshold is not a conflict of interest under the provisions of Minn. Stat. §10A.07. As submitted the advisory opinion request does not provide a specific action or decision and what affect a decision may have on the financial interests of the organization or the board member. Therefore the board cannot address whether a conflict of interest currently exists.

If in the future, the board member concludes that an upcoming action or decision of the state board will constitute a conflict of interest the board member must take the actions required in Minn. Stat. §10A.07 subd. 1 and 2. Those actions include preparing a written statement describing the matter requiring an action or decision and the conflict of interest it creates and providing the statement to the chair of the state board. If there is insufficient time to prepare a written statement the board member must orally inform the state board of the conflict. If possible the board member must abstain from influencing the action or decision that causes the conflict of interest. If the governing rules of the state board do not permit a board member to abstain, or if for some other reason the board member cannot abstain, a written statement describing the conflict of interest and the action taken must be filed with the Campaign Finance and Public Disclosure Board within a week of the action taken.

Issued November 20, 2002

  
Douglas A. Kelley, Chair  
Campaign Finance and Public Disclosure Board

## Cited Statutes

### 10A.01 DEFINITIONS.

**Subd. 5. Associated business.** "Associated business" means an association from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth \$2,500 or more at fair market value.

**Subd. 35. Public official.** "Public official" means any:

(6) member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has either the power to adopt, amend, or repeal rules under chapter 14, or the power to adjudicate contested cases or appeals under chapter 14;

### 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, must 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 must orally inform the superior or the official body of service or committee of the body of the potential conflict.

**Subd. 2. Required actions.** If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must 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 must 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 must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must 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.