

Issued to:

The Honorable Ted A. Mondale
5032 28th Avenue West
St. Louis Park, MN 55416

RE: Potential Conflict of Interest

ADVISORY OPINION #119

SUMMARY

119. A public official or local official is not required to file a potential conflict of interest notice in a case involving official action of general application to the official's business or profession simply because of association in that business or profession. However, if an official or the official's associated business has a financial interest which would be directly and uniquely affected by an official action, then the official must file a potential conflict of interest notice as required by Minn. Stat. § 10A.07, subd. 1 (1990).

FACTS

You request that the Board give guidance to you regarding whether a position you have recently taken with United HealthCare Corporation ("United") will affect certain of your legislative activities in the Minnesota Senate.

You state that in September, 1991, you were designated by United to be "of counsel" to the company and that you report to United's general counsel within the company's legal department. You state that your primary job responsibilities are general legal work related to United's business, policy development and public affairs. You further state that you are not expected to make contact with any public official or public body in Minnesota as a representative of United. You state that you have been retained as an independent contractor and that you will not be an officer, director or employee of the company. You inform the Board that your compensation is fixed and does not include profit sharing or stock options and that neither you nor your spouse now owns or will own any of United's stock.

You state that as part of your retainer arrangement with United, you and the company agreed to a Statement of Ethical Guidelines which you enclosed with your request to the Board. You state that the guidelines address your position with United as it may affect your responsibilities and activities as a State Senator.

You state that the Minnesota Legislature is a citizen's legislature in which Minnesotans of a variety of walks of life make a commitment to public service. You state that the legislature is structured as a part-time endeavor to insure that the legislature is composed of persons whose career experiences will continually benefit the legislative process. You further state that by its very nature a legislature composed of persons with other career pursuits enhances the likelihood that potential conflicts of interest will arise. You state that teachers are asked to pass judgment on education bills, farmers scrutinize agricultural bills, lawyers consider tort reform initiatives and private business owners pass judgment on unemployment and workers compensation measures.

You state that you have reviewed the rules on conflicts of interest that exist in the state's ethical practices laws. In your view those rules appear to be somewhat ambiguous. You ask the Board to answer the following questions:

QUESTION ONE

Does your relationship with United create a conflict of interest that would require that you abstain generally from voting on health care issues that come before the legislature?

OPINION

No. There is no automatic conflict of interest under Minn. Stat. § 10A.07 when a legislator is required to take an action or make a decision involving legislation of general application to the legislator's business or profession. Rather, the legislator must examine each matter on a case by case basis by reviewing the specific action or decision to be taken and determining its effect on the legislator's financial interests or those of an associated business.

To determine whether there is a potential conflict of interest requiring disclosure under Minn. Stat. § 10A.07 (1990), the Board suggests the following analysis:

A). Will the action or decision substantially affect the legislator's financial interests or the financial interests of the legislator's associated business?

If the answer is no, then no conflict exists under Minn. Stat. § 10A.07. If the answer is yes, consider question B.

B). Is the effect on the legislator greater than on other members of the legislator's business classification, profession, or occupation?

If the answer is no, then no conflict exists. If the answer is yes, then the legislator must follow the disclosure provisions of Minn. Stat. § 10A.07 (1990).

A legislator is not required to file a potential conflict of interest notice in a case involving legislation of general application to the legislator's business or profession. For example, a lawyer should ordinarily not be required to file a conflict of interest notice in a case of probate reform law where other lawyers would be similarly affected in essentially the same manner as the legislator. A legislator who owns a small business should not be required to abstain from voting on an omnibus tax bill simply because the legislator's business is subject to taxation. Similarly a legislator who is a high school teacher should not be required to abstain from voting on an omnibus education funding bill simply because the bill appropriates funds for secondary education. In these instances, the profession, occupation, or associated business of the legislator has been disclosed in the required Statement of Economic Interest under Section 10A.09, thereby providing public disclosure of the general interests.

QUESTION TWO

Does your relationship with United create a conflict of interest that would require that you abstain from voting specifically on the Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991?

OPINION

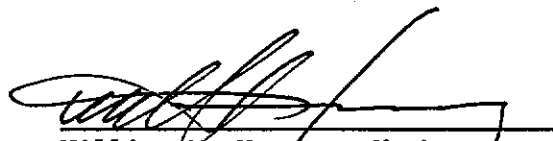
No. To reach this conclusion the Board reviewed a description of the major features and a summary of the Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991, together with comments by Lois Quam, chair of the Minnesota Health Care Access Commission; analysis by Senator Mondale of the financial effect on United HealthCare as opposed to other similarly-situated businesses in Minnesota; and comments by Tom Ehrlichmann, legislative assistant, Health Care Access Division of the Minnesota Senate. The Board applied the analysis discussed under Question One, above.

Senator Mondale is an independent contractor who is "of counsel" to United. Senator Mondale states that his relationship with United is his major source of income outside of the Legislature and that he considers United to be an "associated business" of his, requiring disclosure under Section 10A.09.

Based on the information provided to the Board, it is the Board's opinion that Senator Mondale's action or decision regarding H.F. 2 would not substantially affect his financial interests. The Board found that Senator Mondale's action or decision regarding H.F. 2 either would not substantially affect the financial interests of United or would not have any greater effect upon Senator Mondale than on others of his business classification, because it appears that United is not the only company providing management or administrative services to health care carriers in Minnesota. The Health Care Access Bill, H.F. 2, as passed by the Legislature in 1991, appears to have a broad effect on all health care carriers.

Although the Board is issuing this advisory opinion pursuant to its authority under Minn. Stat. § 10A.02, subd. 12, the ultimate determination of the existence of a potential conflict of interest requiring disclosure rests with the legislator or other public official or local official charged with making the decision.

Issued: 11 February 1992


William M. Heaney, Chair
Ethical Practices Board