

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 public official

ADVISORY OPINION # 267

SUMMARY

A potential conflict of interest exists under Minn. Stat. § 10A.07 only when an official is required to vote in an official capacity on a matter which will substantially affect the official's financial interests or those of an associated business in a greater way than it will affect similarly situated individuals or businesses.

FACTS

Several members of a state board (the State Board) ask the Ethical Practices Board for an advisory opinion based on the following facts:

1. As members of the State Board, you are public officials as defined in Minnesota Statutes, chapter 10A, and therefore are subject to the conflict of interest provisions of Minn. Stat. § 10A.07.
2. The State Board regulates the provision of certain services. In addition, it administers a grant program through which it makes grants for regional services projects. These grants may go to regional services boards or to other entities.
3. State Board members vote on the award of these grants, which are based on written proposals. If required, you would be permitted to abstain from a vote on a particular grant.

4. Sometimes a grant proposal will specify only the purpose for which the grant will be used, such as for research studies or training.
5. In other cases, the proposal may specify both the purpose of the grant and the name of the specific entity which will provide services or receive a sub-grant to be paid for with the grant, such as for a research study to be conducted by a particular organization.
6. In still other cases, the proposal may include a purpose, such as training, and a list of qualified vendors who may be paid to provide this training. In these cases, individuals taking the training select the particular vendor they want to use.
7. Some State Board members have other relationships as a result of their work in the services area regulated by the State Board. The following relationships may exist:
 - a. a member serves without compensation as a board member of a grant proposer;
 - b. A member serves without compensation as a member of a grant proposer's advisory committee;
 - c. A member serves without compensation as a member of a local committee which will receive a sub-grant if a particular grant proposal is funded;
 - d. A member is compensated as the director or as an employee of a grant proposer;
 - e. A member is an employee of one or more counties, and is supervised by county commissioners, two of whom also serve on a regional services board. The regional services board is a proposer for a grant from the State Board. The individual counties will not receive sub-grants from the regional grant.
 - f. A member is compensated by, or owns securities in, a vendor named in a grant proposal as a sole provider of services which would be paid for with grant funds;
 - g. A member is compensated by, or owns securities in, one of several possible providers of training services which may be used by regional professionals in the services field and paid for with grant funds;

- h. A member is compensated by, or owns securities in, an organization which is not named in a grant proposal, but which might benefit from the award of a particular grant.
8. You ask the Ethical Practices Board for an advisory opinion as to whether the described relationships create any potential conflicts of interest under Minn. Stat. § 10A.07 when you vote on the regional grants.

ISSUE

Which, if any, of the relationships described in the facts create potential conflicts of interest under Minn. Stat. § 10A.07?

OPINION

In order for a conflict of interest to exist under Minn. Stat. § 10A.07, three requirements must be met:

1. an official must be called upon to vote in an official capacity;
2. the vote must be on a matter which will substantially affect the official's financial interests or those of an associated business; and
3. the affect on the official or the associated business must be greater than the affect on other similarly situated individuals or businesses. Minn. Stat. § 10A.07.

The first requirement is met for all votes of State Board members, since they are public officials as defined in Minn. Stat. § 10A.01, subd. 18.

Requirements 2 and 3 may or may not be met in a particular situation depending on the affect the proposed grant would have on the associated business and on other similar businesses. Because the facts do not suggest that a vote on a grant proposal would affect the member's own financial interests, only the financial interests of associated businesses are considered in this opinion.

An associated business is one from which the official receives compensation of more than \$50 in a month, or in which the official owns securities worth at least \$2,500. Compensation does not include expense reimbursement. Minn. Stat. § 10A.01, subd. 4.

For the purpose of analysis in this opinion, we assume that if a State Board member is compensated by an entity, or owns securities in the entity, the compensation or securities ownership is sufficient to make the entity an associated business of the member. We also

assume that unless specifically stated in the fact situation, the State Board member does not own securities in the entities under consideration.

With these principles in mind, we address each of the situations presented in the facts.

- a. A member serves without compensation as a board member of a grant proposer.

No potential conflict of interest exists. The grant proposer is not an associated business of the member because no compensation is paid.

- b. A member serves without compensation as a member of a grant proposer's advisory committee;

No potential conflict of interest exists. Neither the advisory committee nor the proposer is an associated business of the member because no consideration is paid.

- c. A member serves without compensation as a member of a local committee which will receive a sub-grant if a particular grant proposal is funded;

No potential conflict of interest exists. The local committee is not an associated business of the member because no compensation is paid.

- d. A member is compensated as the director or as an employee of a grant proposer.

A potential conflict of interest exists because the grant proposer is an associated business of the member, based on the payment of compensation. The award of the grant will affect the financial interests of the business, while other similar businesses will not benefit.

- e. A member is an employee of one or more counties and is supervised by the county commissioners, two of whom also serve on a regional services board. The regional services board is a proposer for a grant from the State Board. The individual counties will not receive sub-grants from the regional grant.

No conflict of interest exists. Even if the counties were associated businesses of the member (a question about which we do not express an opinion), the counties' financial interests are not affected by the grant to the regional services board.

- f. A member is compensated by, or owns securities in, a vendor named in a grant proposal as a sole provider of services which would be paid for with grant funds.

A potential conflict of interest exists because the vendor named to be paid with grant funds is an associated business of the member based on payment of compensation or

securities ownership. That vendor will benefit from the grant whereas other similarly situated vendors will not.

- g. A member is compensated by, or owns securities in, one of several possible vendors of training services which may be used by individuals and paid for with grant funds.

No potential conflict of interest exists. The vendor is an associated business of the State Board member based on payment of compensation or securities ownership; however, to create a conflict of interest, it is necessary that the action under consideration "would substantially affect" the associated business [emphasis added]. A grant for training services which may or may not be provided by a particular vendor will not necessarily affect that vendor. Even if some individuals use the vendor for training, it is not possible to say at the time of the vote that the affect of the grant award on the vendor's financial interests would be substantial.

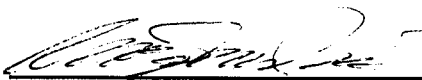
- h. A member is compensated by, or owns securities in, an organization which is not named in a grant proposal, but which may benefit from the award of a particular grant.

No potential conflict of interest exists. There is an associated business of the State Board member, based on payment of compensation or securities ownership. However, it cannot be said at the time of the vote that awarding the grant will have a substantial affect on the unnamed organization.

In those cases where a potential conflict of interest exists, the State Board member must comply with the provisions of Minn. Stat. § 10A.07. If there is sufficient time before the vote, a member with a conflict must file a notice of the potential conflict with the Ethical Practices Board. If there is insufficient time to file the notice, the member must disclose the conflict to the State Board before the matter is discussed. In either case, the member must abstain from the vote, and may not chair the meeting or offer any motion or discussion on the matter. Minn. Rules. Part 4515.0500.

The Ethical Practices Board is aware that another statute also imposes conflict of interest restrictions on State Board members. That statute is not within the Ethical Practices Board's jurisdiction and we express no opinion on its application. However, we do note that the other statute is worded differently than §10A.07. Therefore, it is important to recognize that whether or not a potential conflict of interest exists under Chapter 10A is not relevant to determining whether the same situation creates a conflict of interest under the statute specifically applicable to the State Board.

Issued: 4-25-97



Carolyn D. Rodriguez, Chair
Ethical Practices Board

CITED 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. 3. "Association" means business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert.

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.

Subd. 18. "Public official" means any:

(c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;

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.

Minn. Rules

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.