

State of Minnesota
Campaign Finance and Public Disclosure Board
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 for legislator.

ADVISORY OPINION # 325

SUMMARY

A specific vote, action, or decision by a legislator may create a conflict of interest under Minn. Stat. §10A.07. The occupation or profession of a legislator does not in itself create a conflict of interest.

FACTS

As a legislator, and therefore a public official as defined in Minnesota Statutes, Chapter 10A, you ask the Campaign Finance and Public Disclosure Board (the Board) for an advisory opinion based on the following facts:

1. In addition to being a legislator, you hold an appointed position with a Minnesota municipality.
2. You serve as the Chair of a legislative committee that may deal with issues or appropriations that directly affect your financial interests, or those of your employer.
3. Hypothetically, a specific issue or appropriation could benefit you or your employer more than other individuals in the same occupation, and therefore create a potential conflict of interest under Minn. Stat. §10A.07.

ISSUE

Does the potential conflict of interest provision in Minn. Stat. § 10A.07 prevent a public employee from serving in the state legislature?

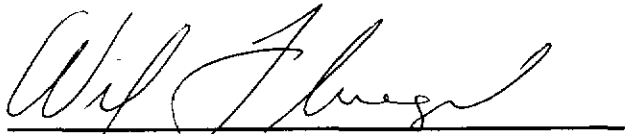
OPINION

No. Any potential conflict of interest is created by specific votes, actions, or decisions that a legislator may need to take in regard to a given piece of legislation. Potentially the occupation or affiliated business of any legislator may create a conflict of interest under Minn. Stat. § 10A.07. The statute does not try to preempt potential conflicts of interest by preventing the members of certain occupations or professions from serving in the legislature. A legislator employed by a local unit of government, in either an appointed or civil service capacity, will need to make the same specific evaluations of potential conflicts of interest when acting on legislation that a legislator employed in any other profession must make.

It is important to note that under Minn. Stat. § 10A.07 a potential conflict of interest arises only when a public official's votes, actions, or decisions would affect the financial interests of the official, or those of an associated business, in a manner that is greater than the effect on other members of the same occupation or profession. If a potential conflict of interest does occur, Minn. Stat. §10A.07 requires written disclosure of the conflict to the appropriate presiding officer of the body of service. At the legislator's request the body of service may excuse the member from voting or taking other action on the legislation in question.

This opinion is limited to interpretation of the conflict of interest provisions of Minn. Stat. § 10A.07. Your request indicates that you have concerns about the possibility of ethical issues or conflicts of interest in other statutes or rules. Questions not related to Chapter 10A are not within the purview of the Board, and the Board may not express any opinion on them.

Issued: 2-20-01



Wil Fluegel, Chair
Campaign Finance and Public Disclosure 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.