

**State of Minnesota**  
**Campaign Finance & Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**THIS ADVISORY OPINION IS PUBLIC DATA**  
pursuant to a consent for release of information  
provided by each of the requesters

**RE: Potential conflict of interest**

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**ADVISORY OPINION 431**

**SUMMARY**

A governmental entity is not a "business" and is not an "associated business" of its elected officials for the purposes of Minnesota Statutes section 10A.07.

**FACTS**

As the representatives of the City of Minneapolis, Minneapolis School District #1, and the Minneapolis Parks and Recreation Board, you ask for an advisory opinion on behalf of local officials based on the following facts which were developed by the requesters in consultation with Board staff:

1. Individuals are elected by citizens to serve on the Minneapolis School District #1 Board (the School Board), which is the governing board for the school district. Other individuals are elected by citizens to serve on the Minneapolis Park and Recreation

Board (the Park Board) which has jurisdiction over the Minneapolis park system.

2. Members of the School Board and members of the Park Board are compensated by the School District or by the Park Board for their work as members of their respective Boards. Each member receives compensation of more than \$50 per month from the respective governmental entity.
3. The Planning Commission of the City of Minneapolis (the Planning Commission) is a commission established by the City of Minneapolis charter. The charter requires that a member of the School Board and a member of the Park Board be Planning Commission members.
4. The Planning Commission makes, recommends, or votes on major decisions related to development, zoning, and economic development.
5. Members of the Planning Commission are local officials of Minneapolis, which is itself a metropolitan governmental unit under Minnesota Statutes section 10A.01, subdivision 24.
6. As a member of the Planning Commission, the School Board member may be called upon to vote on planning decisions that would substantially affect the financial interests of the School District and the Park Board member may be called upon to vote on planning decisions that would substantially affect the financial interests of the Park Board.
7. The decisions of the Planning Commission may constitute recommendations to the governing body of the City of Minneapolis, in which case the governing body of the city makes the final decision.
8. Alternately, the decisions of the Planning Commission may constitute final decisions subject only to appeal through an established appeals process.

Based on the above facts, you ask the following question:

### **Question**

If the School Board member or the Park Board member is called upon to vote on a matter that would substantially affect the financial interests of the School District or of the Park Board, respectively, does the School Board member or the Park Board member have a potential conflict of interest that would require the member to take action under Minnesota Statutes section 10A.07?

### **Opinion**

Potential conflicts of interest are defined in terms of the types of action that give rise to such conflicts. Minnesota Statutes section 10A.07 provides that a potential conflict arises if:

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 . . .

Minneapolis is a metropolitan governmental unit and Planning Commission members are local officials in that metropolitan governmental unit. Thus, Planning Commission members are officials governed by the requirements of Section 10A.07. The facts specify that the local official receives compensation of more than \$50 in a month from the School District or from the Park Board and that a vote by either member may substantially affect the financial interests of the governmental unit with which the member is associated. Nothing in the facts suggests that the governmental unit with which the member is associated is operating as a business instead of acting in its governmental capacity. This opinion is limited to relationships with governmental units acting in a governmental capacity.

The requirements of § 10A.07 are triggered if the official's vote would affect the financial interests of an "associated business" of the official. Thus, if the School District is an associated business of the School Board member or if the Park Board is an associated business of the Park Board member, the official may be required to take the steps specified in §10A.07 to avoid a conflict of interest.

The phrase "associated business" is specifically defined in Minnesota Statutes section 10A.01, subdivision 5. When applying statutes, the Board follows the rules of statutory construction as set forth in Minnesota Statutes, including Minnesota Statutes section 645.08. One of the principles of § 645.08 is that unless it is inconsistent with the intent of the statute, words must be given their common meaning. The common meaning of "business" is understood by most without resort to a dictionary. Typically a business is an endeavor in which one or more persons engage to generate a profit or provide a livelihood. In the common understanding, "business" on the one hand, is separate from "government" on the other.

The statutory definition of "associated business" provides additional support for the understanding that a governmental entity, such as a school district or the Park Board is not a business. Section 10A.01, subdivision 5, defines an associated business as "an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity."

The statute specifically lists types of entities that are commonly understood to be forms of organization under which persons may do business. Corporations, partnerships, limited liability companies, and limited liability partnerships are all statutorily defined legal forms for business organizations. The inclusion of the general phrase "other organized legal entities" does not provide a basis to extend the definition of business to include governmental entities acting in a governmental capacity. Minnesota Statutes section 645.08, clause 3, provides that general words are construed to be restricted in their meaning by preceding particular words. As a result, the Board construes "other organized legal entity" to refer to other forms of business organizations that may be recognized from time to time.

Based on the above analysis the Board concludes that in this case neither the School District nor the Park Board are included in the scope of entities that may be associated businesses under Minnesota Statutes section 10A.07. As a result, votes by the School Board member or the Park Board member do not give rise to potential conflicts of interest based on the relationship between the School Board member and the School District or between the Park Board member to the Park Board.

### **Comment on Advisory Opinion 325**

In Advisory Opinion 325, the Board was asked if a person appointed to a position with a Minnesota municipality was prevented from serving in the legislature. The Board concluded that the municipal appointment did not prevent the individual from also serving in the legislature. However, although the question was not presented or discussed in the opinion, Advisory Opinion 325 appears to assume that a municipality could be an associated business. The present opinion recognizes that a governmental entity, including a municipality, is not a business and, thus, is never an "associated business". To the extent that Advisory Opinion 325 implied a different conclusion, it is hereby revoked.

Issued November 7, 2012

/s/ Andrew M. Luger  
Andrew M. Luger, Vice Chair  
Campaign Finance and Public Disclosure Board

## Relevant Statutes

### 10A.01 DEFINITIONS

. . .

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity 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.

. . .

### 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.

. . .

### 645.08 Canons of Construction

In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

(1) words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition;

. . .

(3) general words are construed to be restricted in their meaning by preceding particular words;

. . .