

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

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Issued to: Senator David Tomassoni
75 Rev. Dr. Martin Luther King Jr. Blvd.
Capitol, Room G-9
St. Paul, MN 55155-1606

RE: Potential Conflict of Interest for a Member of the Legislature

ADVISORY OPINION 439

SUMMARY

Employment by a member of the legislature as the executive director of an association that is represented by a lobbyist does not in itself create a conflict of interest. An official action or decision by the legislator may create a conflict of interest under specific circumstances.

FACTS

As a State Senator, and therefore a public official as defined in Minnesota Statutes Chapter 10A, you authorized your legal counsel to request on your behalf an advisory opinion from the Campaign Finance and Public Disclosure Board (the Board) based on the following facts that were provided in the letter requesting the advisory opinion and in documentation provided with the request.

1. You have been hired as the Executive Director of the Range Association of Municipalities and Schools (RAMS).
2. As a result, RAMS is now for you an "associated business" as defined in Minnesota Statutes section 10A.01, subdivision 5, because the association will be compensating you more than \$50 a month.
3. RAMS is a voluntary association of political subdivisions that has been represented by a lobbyist registered with the Board since 1991. Therefore RAMS is a "principal" as defined in Minnesota Statutes section 10A.01, subdivision 33.
4. You have provided with your request a copy of an agreement between you and RAMS that details your duties as Executive Director. The agreement specifically states that you will not be a lobbyist for RAMS, that you will not be involved with the hiring of a lobbyist for the association, and that the lobbyist will not report to the position of Executive Director.
5. You are aware of prior advisory opinions issued by the Board that considered potential conflicts of interest for a member of the Minnesota legislature and the

requirements when a conflict of interest exists.¹ In particular you note that Advisory Opinion 325 considered a potential conflict of interest and concluded that “the occupation or profession of a legislator does not in itself create a conflict of interest.” Based upon prior Board opinions and the provisions of Chapter 10A you and your legal counsel have concluded that a conflict of interest did not occur when you accepted the position of Executive Director of RAMS. However, you are also aware that an advisory opinion issued by the Board provides safe harbor only to the individual or association that requested the opinion. Therefore, you have asked to the Board for an advisory opinion specific to the facts of this situation.

ISSUE

Will employment as Executive Director of RAMS create a conflict of interest, as defined in Minnesota Statutes section 10A.07, with your service as a State Senator?

OPINION

The only conflict of interest provision within the jurisdiction of the Campaign Finance and Public Disclosure Board is Minnesota Statutes section 10A.07. No employment relationship, in itself, will give rise to a conflict of interest under this statute. Instead, the statute requires that public officials evaluate the decisions they are required to make and the actions they are required to take as a part of their official duties and to determine if a conflict of interest exists.

To determine if there is a conflict of interest a public official must consider two criteria, both of which are established by Minnesota Statutes section 10A.07. First, will the official action substantially benefit either the public official's personal financial interests or the financial interests of an associated business? If the answer is yes then the second criteria is whether the benefit will be greater for the public official or the official's associated business than the affect on other members of the same business classification, profession, or occupation. Only when both conditions are true does the public official face a conflict of interest.

Under the statute a legislator who finds that an action will create a conflict of interest must prepare a written statement describing the matter requiring the official's action or decision and the conflict of interest and deliver the notice to the presiding officer of the legislative body in which the official serves. If there is not time for a written statement, the legislator should orally inform the legislative body of the potential conflict. A legislator may be excused from taking part in an action or decision that creates a conflict of interest.

Hypothetically, a specific issue or appropriation before the Senate could benefit RAMS in a way that will create a conflict of interest for you. But accepting employment with RAMS does not create a conflict of interest with the position of State Senator under the provisions of Chapter 10A.

Issued: February 6, 2015

/s/ George A. Beck

George A. Beck, Chair
Campaign Finance and Public Disclosure Board

¹ See Advisory Opinions 237, 264, 325, 355, and 368. Advisory opinions are available for viewing at www.cfboard.state.mn.us/ao/index.html .

Cited Statutes and Administrative Rules

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 more than \$2,500 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.

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.

Subd. 4. Exception; judges. Notwithstanding subdivisions 1 and 2, a public official who is a district court judge, an appeals court judge, or a Supreme Court justice is not required to comply with the provisions of this section.