



GOVERNING & MANAGING INFORMATION

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# Official Conflict of Interest

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# Conflict of Interest Highlights



## 1. What is a conflict of interest?

A conflict of interest occurs when an individual has a personal interest in a decision about which he or she has the power to make. A prohibited personal interest may be contractual or non-contractual. It includes decisions in which personal involvement, gain or financial benefit exist for the decision-maker. The following elements must be considered:

- **Contracts.** Public officers may not have a personal financial interest in any sale, lease, or contract that they are authorized to make in their official capacities. Council members of home rule charter cities should consult their city charters for additional limitations.
- **Incompatibility of offices.** A public officer may not hold two positions if the positions' functions are inconsistent with one another.
- **Self-interest in non-contractual matters.** Sometimes, elected officials find they have an interest in a non-contractual decision that the council will make. This type of interest is sometimes of a financial nature, but not always. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. An interested councilmember should generally abstain from discussing and voting on these matters.

## 2. Who is subject to the conflict of interest law for contracts?

All public officers who have the authority to take part in making any sale, lease or contract in their official capacity are subject to the conflict of interest law. A "public officer" certainly includes council members. In some circumstances, it may also include non-elected officers and employees who are able to influence contracting decisions.



## 3. What are some common exceptions to the conflict of interest law for contracts?

The statute generally prohibits city councils from entering into a contract if one of its council members has an interest in it. However, there are several exceptions to the law. The following actions are permitted under certain circumstances, even if they affect the personal interests of a councilmember:

- Designating a bank or savings association.
- Designating an official newspaper.

- Contracting for goods or services that are not required to be competitively bid.
- Contracting with a volunteer fire department for payment of wages or retirement benefits to its members.
- Contracting for construction materials or services, if the contract is let by a sealed bid process and the city has a population of 1,000 or less.
- Contracting to rent space in a public facility to a public officer at a rate similar to that paid by other renters.
- Issuing a grant offered by a local development organization.

There are several other less common exceptions that are described in Part III. A. 2. of this memo.



#### **4. Is there a special procedure to use if a contract is permitted under one of the exceptions?**

If a contract with an official is permitted under one of the exceptions in the law, the following must generally be done:

- The council must approve the contract by unanimous vote.
- The interested officer should abstain from voting on the matter.

There are additional requirements for some of the exceptions that are described in Part III. A. 2. of this memo.

#### **5. Who is subject to the law regarding incompatibility of offices?**



All persons in elected offices must be aware of this law. In addition, many city employees and appointed officials may also need to be aware of this law.

#### **6. When are offices incompatible?**

Generally, positions are incompatible when one or more of the following conditions exist:

- If one position:
  - hires or appoints the other.
  - performs functions that are inconsistent with the other.
  - makes contracts with the other.
  - approves the official bond of the other.

- If a specific statute or charter provision:
  - states that one person may not hold two or more specific positions.
  - requires that the officer may not take another position.
  - requires that the officer devote full-time to the position.

## 7. What are common problems in applying the laws?



Most questions seem to come from situations involving a non-contractual interest of a councilmember. These are some of the more common:

- **Self-appointment.** City officials may not generally appoint themselves to a position.
- **Contracts with relatives of a councilmember.** Generally, a contract with a councilmember's relative is not prohibited unless the councilmember has a financial interest in the relative's business or income.
- **Zoning of a councilmember's land.** Generally, a city council is not prohibited from rezoning property owned by a councilmember. Because the rules for participating can vary on a case-by-case basis, cities should consult with their city attorneys before taking council action.
- **Local improvements.** A councilmember is probably not prohibited from petitioning for an improvement that will benefit his or her property. Because the rules for participating can vary on a case-by-case basis, cities should consult with their city attorneys before taking council action.
- **Issuing licenses to councilmembers.** Because the rules for participating can vary on a case-by-case basis, cities should consult with their city attorneys before taking council action. State rule prohibits a councilmember from voting on a liquor license application from a spouse or relative.

## 8. What happens if the city doesn't follow the conflict of interest laws?



- **Contracts.** Any contract that has been made illegally is generally void. In addition, every public officer who violates the conflict of interest law can be found guilty of a gross misdemeanor, which has a penalty of a fine of up to \$3,000 and imprisonment for up to one year.
- **Incompatible offices.** If a public officer accepts a position that is incompatible with his or her office, the first office is automatically vacated.

- *Non-contractual situations.* Although the outcomes of these types of situations are less clear, a council decision could be reversed. There is also the potential of personal liability for the officials who are involved.

## **9. Where can cities get further information?**



The League of Minnesota Cities has several publications that discuss issues related to conflict of interest in more detail. Call the League's Research Department for further information, (651) 281-1200 or (800) 925-1122.



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# Part I. Introduction

State law sets many standards for public officers. Some of the most important and misunderstood are the laws addressing conflicts of interest. There are several different laws of which public officials should be aware. Generally, these laws do the following:

- Prohibit public officials from accepting gifts.
- Require disclosure of conflicts of interest and economic reporting.
- Require certain reporting by lobbyists.
- Prohibit conflicts of interest.
- Prohibit officials from holding incompatible offices.

As broad as these laws are, situations can arise that may not be clearly covered by them. While this document discusses the general principles behind these various laws, it is important to remember that the appearance of impropriety or of a conflict of interest can also be damaging to a councilmember's image and the city's reputation, even if the act is not specifically prohibited by law.

## Part II. Prohibited gifts, economic disclosure, and political activities

### B. Prohibited gifts

#### 1. All Minnesota cities, in general

[Minn. Stat. § 471.895.](#)

Elected and appointed “local officials” may not receive a gift from any “interested person.” An “interested person” is a person, or representative of a person or an association, who has a direct financial interest in a decision that a local official is authorized to make. This law applies to all cities in Minnesota.

The law clearly applies to council members. However, since there is no definition of the term “local official,” it is not known if the law covers all city employees or just certain high level employees, such as city managers or administrators. Until further clarification of the law, the safest course of action is to assume the law applies to all employees, regardless of their duties.

## 2. Exceptions for all Minnesota cities

Minn. Stat. § 471.895,  
subd. 3.

The following types of gifts are permitted under exceptions to the gift law:

- ***Lawful campaign contributions.***
- ***Services to assist an official in the performance of official duties.*** These types of services include such things as providing advice, consultation, information, and communication in connection with legislation and services to constituents.
- ***Services of insignificant monetary value.***
- ***A plaque or similar item.*** These items are permitted if given to recognize individual services in a field of specialty or a charitable cause.
- ***A trinket or item of insignificant monetary value.***
- ***Informational material of unexceptional value.***
- ***Food or beverage given at a reception, meal or meeting by an organization before whom the recipient makes a speech or answers questions as part of a program.*** This exception is only available if the location of the reception, meal or meeting is away from the recipient’s place of work.
- ***Gifts given because of the recipient’s membership in a group.*** However, the majority of the members of the group must not be local officials. In addition, the gift is only acceptable if an equivalent gift is given to the other members of the group.
- ***Gifts between family members.*** However, the gift may not be given on the behalf of someone who is not a member of the family.
- ***To national or multi-state organization conference attendees.*** The majority of dues paid to the organization must be from public funds, and the gift must be food or a beverage given at a reception or meal in which an equivalent gift is offered to all other attendees.

## 3. Metropolitan cities with populations over 50,000

Minn. Stat. § 471.895;  
Minn. Stat. §§  
10A.071; 10A.01,  
subd. 21.

Metropolitan cities with a population over 50,000 are subject to an additional law. Local officials in these cities are also prohibited from receiving gifts from “lobbyists.” A “lobbyist” is defined as:

- Someone engaged in lobbying in the private or public sector; or,
- A city employee or non-elected city official who spends more than 50 hours in any month attempting to influence governmental action.

Minn. Stat. § 10A.01,  
subd. 22.

A “local official” is an elected or appointed city official or a city employee with authority to make, recommend or vote on major decisions on the expenditure or investment of public funds.

## **C. Conflict of interest and economic disclosure in metropolitan-area cities with populations over 50,000**

### **1. Conflict of interest disclosure**

Minn. Stat. § 10A.07.

Elected and appointed officials of metropolitan cities with populations over 50,000 must disclose certain information if they will be involved in a decision that will affect their financial interests.

The law affects elected or appointed city officials, or city employees with authority to make, recommend or vote on major decisions regarding the expenditure or investment of public funds. The law applies if the official or employee must make a decision or take an action that substantially affects his or her financial interests or those of a business with which he or she is associated. However, there is an exception if the effect is no greater for the interested business than for others in that business, occupation, or position.

The interested official or employee must do the following:

- Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest.

- Deliver a copy of the notice to his or her superiors.
  - i. If the official is an employee, he or she must deliver a copy of the statement to his or her immediate superior.
  - ii. If the official is directly responsible only to the city council, it should be given to the city council.
  - iii. If the city official is appointed, written notice should go to the chair of the unit. If the potential conflict involves the chair, the written notice should go to the appointing authority (in most cases, the city council).
  - iv. If the official is an elected official, the written statement should go to the presiding officer (the mayor, in most instances).
  - v. If the potential conflict involves the mayor, the written notice should go to the acting presiding officer.
- If a potential conflict of interest arises and there isn't time to comply with the above requirements, the city official must orally inform his or her superior or the city council.
- The employee's superior must assign the matter to another employee who does not have a potential conflict of interest.
- If there is no immediate superior, the city official must abstain from influence over the action or decision, if possible, in a manner prescribed by the Campaign Finance and Public Disclosure Board (Public Disclosure Board).
- If the city official is not permitted to abstain or cannot abstain, he or she must file a statement describing the potential conflict and the action taken. The city official must file this statement with the city council within a week of the action.

Minn. R. 4515.0500.

## 2. Statements of economic interest

### a. Information required

City officials in cities within the seven-county metropolitan area with populations over 50,000 (as determined by the most recent federal census, a special U.S. census, an estimate by the Met Council, or the state demographer) must file a statement of economic interest. The statement must be filed with the local official's governing body and the Public Disclosure Board and must report the following information:

- Their name, address, occupation, and principal place of business.
- The name of each associated business (and the nature of that association).

Minn. Stat. § 10A.01, subd. 29.

Minn. Stat. § 10A.09, subds. 6a, 1.

- Option-based, direct, or indirect interests in all real property within the state (except homestead property).
- Interests in horse-race-track property or racehorses in or out of the state.

Minn. Stat. § 10A.09, subd. 5.

Minn. Stat. § 10A.09, subd. 6; Minn. R. 4505.0900.

Minn. Stat. § 383B.053.

City officials can get a form for the disclosure of economic interests from the Public Disclosure Board. Officials must then file supplementary statements each year by April 15, and a final statement upon leaving office.

There are similar additional requirements for elected officials of cities in Hennepin County with populations greater than 75,000.

## **b. Time for filing**

An individual must file a statement of economic interest with the Public Disclosure Board by the following dates:

- Within 60 days of accepting employment as a local official; or,
- Within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective office.

## **c. Notification**

Upon receiving an affidavit of candidacy or a petition to appear on the ballot from someone who is required to file a statement of economic interest, the county auditor must notify the Public Disclosure Board. Likewise, an official who nominates or employs a city official who is required to file a statement of economic interest must also notify the Public Disclosure Board. The county auditor, or nominating/employing official, must provide the Public Disclosure Board with the following information:

- The name of the person required to file the statement of economic interest.
- The date of the affidavit of candidacy, petition or nomination.

The city official must also file the statement with the city council. The city council must maintain these statements as public data. For more information, contact the Public Disclosure Board at (651) 296-5148.

Minn. Stat. § 10A.09, subd. 2.

More information is available on the Campaign Finance and Public Disclosure Board's web site at: [www.cfboard.state.mn.us](http://www.cfboard.state.mn.us).

# **D. Statements of economic interest for trustees of public pension plans**

## **1. Information required**

Minn. Stat. § 356A.06, subd. 4 (c).

Each member of the governing board of a public pension plan must file a statement of economic interest with the plan. This includes the trustees of local relief association pension plans (both regular trustees and ex-officio trustees, such as the mayor and clerk). The statement must include the following:

- The person’s principal occupation and place of business.
- Whether or not the person has an interest of 10 percent or more in an investment security brokerage business, a real-estate-sales business, an insurance agency, a bank, a savings and loan, or another financial institution.
- Any relationship or financial arrangement that could give rise to a conflict of interest.

## 2. Time for filing

Minn. Stat. § 356A.06, subd. 4.

The statement must be filed annually with the plan’s chief administrative officer. It must be available for public inspection during regular office hours at the pension plan’s office. Information must also be filed each year by Jan. 15 with the Public Disclosure Board.

## E. Lobbyist regulations

Minn. Stat. § 10A.04.

State law contains broad lobbyist reporting requirements. Lobbyists who attempt to influence the actions of metropolitan governmental units must report expenditures for these activities in addition to expenditures for state legislative and administrative lobbying activities.

Minn. Stat. §§ 10A.01, subd. 11; 10A.04, subd. 2.

City employees and non-elected city officials who spend more than 50 hours in any month on lobbying activities must register and submit reports of lobbying expenses to the Public Disclosure Board each year by Jan. 15 and June 15.

Minn. Stat. § 10A.04, subd. 4 (c).

These reports must include gifts and items or benefits valued at \$5 or more that lobbyists give to local officials, state lawmakers or other public office holders. Campaign contributions to a candidate are excluded from this particular reporting requirement. However, cities should note that even though the reporting requirement applies at the \$5 amount, this does not necessarily exempt lesser amounts from the gift law.

See Part II - A - *Prohibited gifts*.

Minn. Stat. § 10A.01, subd. 33.

Associations that spend more than \$500 for lobbying, or \$50,000 or more to influence public policy decisions at the metropolitan or state level, must also file spending reports. These reports must indicate the levels of total spending for both local and state lobbying activities.

## F. Leave during political candidacy

5 U.S.C. §§ 1502-3;  
Minn. Stat. § 211B.09.

The extent to which a city can control the political activities of its employees is unclear. State law prohibits public employees from using their official authority or influence to compel a person to apply for membership or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. State law also prohibits a political subdivision from imposing or enforcing additional limitations on the political activities of employees.

*Martin v. Itasca  
County*, 448 N.W.2d  
368 (Minn. 1989).

However, the Minnesota Supreme Court has held that a county could adopt a policy to require employees to take an unpaid leave during a political candidacy. The court also held that a county employee who was a candidate for a county office had no due process right to a hearing before being placed on unpaid leave.

Minn. Stat. § 43A.32; 5  
U.S.C. §§ 1501-2; 5  
U.S.C. § 7324.

The court reasoned that a local government has an interest in prohibiting government employees from certain political activity. As a result, a legislative body could prohibit a government employee from becoming a candidate for elective office to prevent potential conflict in the workplace between the employee and the supervisor-incumbent during the campaign, and also to prevent any coercion of fellow employees and subordinates to assist in the political campaign. For these reasons, the court stated that a local government could suspend, or even discharge, a government employee who seeks elective office.

Minn. Stats. §§  
10A.20, subd. 11;  
211B.09-.10; 18 U.S.C.  
§§ 600-601; 5 U.S.C. §  
1503.

It is important to note that the court did not discuss whether such a policy may also be applied to the incumbent who was running for re-election. The court also did not consider several statutes that appear to limit the restrictions employers may impose on their employees' political activities. Cities should exercise caution when adopting a policy to regulate the political activities of employees.

## **Part III. Conflict of interest in contracts**

### **G. All cities**

#### **1. In general**

Minn. Stat. § 471.87.

Generally, public officers may not have a personal financial interest in a sale, lease or contract they are authorized to make in their official capacity. A "public officer" certainly includes a mayor, a councilmember or an elected official. In some circumstances, the designation may also include appointed officers and employees who are able to influence contracting decisions.

A.G. Op. 90-E-5 (Nov. 13, 1969); A.G. Op. 90e-6 (June 15, 1988).

The attorney general has advised that the conflict of interest law applies to any councilmember “who is *authorized* to take part in any manner” in the making of the contract. Simply abstaining from voting on the contract will not allow the contract to be made. The attorney general reasoned that if the Legislature had only wanted to prohibit a contract with an interested officer who votes on the contract, it would not have used the word “authorized.”

A.G. Op. 90e-6 (June 15, 1988).

A literal reading of the statute might suggest that it does not apply to city officers who are unable to make a contract on behalf of the city. However, the attorney general has given the statute a broad interpretation, which could mean the statute affects more officials than just those who actually make the decision to enter into the contract. As a result, it may be wise to take a conservative approach regarding contracts with any city official.

A.G. Op. 470 (June 9, 1967).

The clerk in a Standard Plan statutory city, or in a home rule charter city having a similar plan of government, is a member of the council but occupies a peculiar position. He or she is subject to the conflict of interest statutes and may not be interested in a contract with the council. However, the council is allowed to impose duties on the clerk in addition to those assigned by statute, and the council may fix the clerk’s compensation for those duties.

## 2. Exceptions and the procedures to use them

[Minn. Stat. § 471.881.](#)

There are several important exceptions to the conflict of interest law on contracts. These exceptions apply to all cities, despite any other statutes or charter provisions.

[Minn. Stat. § 471.88, subd. 1; 1989 Street Improvement Program v. Denmark Township, 483 N.W.2d 508 \(Minn. App. 1992\).](#)

Generally, an exception may only be used when approved by unanimous vote of the council. In the past, it has been unclear whether this meant an interested officer should vote or abstain. However, a 1992 decision by the Minnesota Court of Appeals suggests that an interested officer should abstain from voting, even when not expressly required to do so under the law.

[1989 Street Improvement Program v. Denmark Township, 483 N.W.2d 508 \(Minn. App. 1992\).](#)

The case dealt with a local improvement that was to be paid for with special assessments. Two members of the town board owned properties that would be specially assessed. The two interested board members abstained from voting on whether the improvement should occur. The remaining three board members approved the project. The township was challenged because the project had not received the required four-fifths majority vote of the board. However, the court said the two interested board members were correct not to have voted on the project since their interests disqualified them from voting. As a result, the remaining three board members’ votes were sufficient to unanimously approve the project.

See Part IV - E - *Conflict of interest check list.*

An interested officer should disclose his or her interest at the earliest stage and abstain from voting or deliberating on any contract in which he or she has an interest. The remainder of the council must unanimously approve the contract. There are also additional requirements for some of the exceptions that are discussed below.

**The following exceptions are allowed if the proper procedure is followed:**

Minn. Stat. § 471.88, subd. 2.

Minn. Stat. ch. 118A.

- ***The designation of a bank or savings association as an authorized depository for public funds and as a source of borrowing.*** No restriction applies to the designation of a depository or the deposit of public funds in the depository as long as the funds are protected in accordance with state law.

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the designation by unanimous vote.
- ii. The official who has an interest in the bank or savings association must disclose this fact, and it must be entered in the council meeting minutes. The official must make this disclosure when the bank or savings association is first designated or when the official is first elected (if that occurs later). The disclosure serves as notice of the interest and is only necessary once.
- iii. The interested officer should abstain from voting on the matter.

Minn. Stat. § 471.88, subd. 3.

Minn. Stat. § 331A.04.

- ***The designation of an official newspaper or the publication of official matters in the newspaper.*** This exception applies only if the interested official's newspaper is the only publication qualified to be the official newspaper.

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the designation by unanimous vote.
- ii. The interested officer should abstain from voting on the matter.

Minn. Stat. § 471.88, subd. 4.

- ***A contract with a cooperative association of which the official is a shareholder or stockholder, but not an officer or manager.***

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer should abstain from voting on the matter.

Minn. Stat. § 471.88, subd. 5.

Minn. Stat. § 471.345; See League research memo *Competitive Bidding Requirements in Cities* (130B1.3) for more information.

See Part V - *Incompatibility of offices*.

Minn. Stat. §§ 471.88, subd. 5; 471.89.

See Forms 1 and 2 for sample resolutions.

See Form 3 for sample affidavit.

Minn. Stat. § 471.89, subd. 2.

See Forms 2 and 3.

- ***A contract for goods or services if competitive bids are not required by law.*** Generally, a city must use competitive bidding if the amount of a contract for the sale, purchase or rental of supplies, materials or equipment or for the construction, alteration, repair or maintenance of real or personal property is more than \$50,000.

This exception appears to apply to contracts that do not have to be competitively bid, like contracts for professional services or employment. A city may want to seek a legal opinion if it is unsure about whether this exception applies to a particular situation.

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer should abstain from voting on the matter.
- iii. The council must pass a resolution setting out the essential facts, such as the nature of the officer's interest and the item or service to be provided, and stating that the contract price is as low or lower than could be found elsewhere.
- iv. Before a claim is paid, the interested officer must file an affidavit with the clerk that contains the following:
  - The name and office of the interested officer.
  - An itemization of the commodity or services furnished.
  - The contract price.
  - The reasonable value.
  - The interest of the officer in the contract.
  - That, to the best of the officer's knowledge and belief, the contract price is as low or lower than the price that could be obtained from other sources.
- v. In the case of an emergency when the contract cannot be authorized in advance, payment of the claims must be authorized by a resolution (see above) in which the facts of the emergency are also stated.

[Minn. Stat. § 471.88, subd. 6.](#)

A.G. Op. 358-E-4 (Jan. 19, 1965); A.G. Op. 358-e-9 (April 5, 1971); A.G. Op. 90-E (April 17, 1978).

Also see Part V - *Incompatibility of offices.*

- ***A contract with a volunteer fire department for the payment of compensation or retirement benefits to its members.*** There is still some question as to whether this exception applies to both municipal and independently operated fire departments. A literal reading of the statute suggests it applies only to an actual contract. Since cities do not usually contract with a municipal fire department, there is a possibility this exception may only apply to contracts with an independent fire department. However, the attorney general has issued mixed opinions, some of which imply the exception can apply to both kinds of fire departments. A councilmember should also consider whether serving the city in two functions would result in incompatible offices.

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer should abstain from voting on the matter.

[Minn. Stat. § 471.88, subd. 7.](#)

- ***A contract with a municipal band for the payment of compensation to its members.***

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer should abstain from voting on the matter.

[Minn. Stat. § 471.88, subsd. 9, 10.](#)

- ***Contracts between an import/export firm and an economic development authority (EDA), port authority, or seaway port authority when a commissioner is employed by the firm.***

***Procedure.*** The following must occur to use this exception:

- i. The authority must approve the contract by unanimous vote.
- ii. The interested officer must abstain from voting on the matter.

[Minn. Stat. § 471.88, subd. 11.](#)

- ***Bank loans or trust services between a bank and a public housing authority, port authority, or EDA when the bank employs one of the commissioners.***

***Procedure.*** The following must occur to use this exception:

- i. The authority must approve the contract by unanimous vote.
- ii. The commissioner must disclose the nature of those loans or trust services of which he or she has personal knowledge.
- iii. The disclosure must be entered into the meeting minutes.
- iv. The interested officer should abstain from voting on the matter.

Minn. Stat. § 471.88,  
subd. 12.

- ***A contract for construction materials or services, or both, by sealed bid process if the city has a population of 1,000 or less and the sealed bid process is used.***

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer may not vote on the question of the contract when it comes before the governing body for consideration.

Minn. Stat. § 471.88,  
subd. 13.

- ***A contract to rent space in a public facility at a rate equal to that paid by other members of the public.***

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the contract by unanimous vote.
- ii. The interested officer must abstain from voting on the matter.

Minn. Stat. § 471.88,  
subd. 14.

- ***An application for a grant offered by a local development organization (HRA, EDA, community action program, port authority or private consultant).***

***Procedure.*** The following must occur to use this exception:

- i. The authority must approve the application by unanimous vote.
- ii. The interested officer must abstain from voting on the matter.
- iii. The interested officer must disclose that he or she has applied for a grant.
- iv. The interest must be entered into the official minutes.

Minn. Stat. § 471.88,  
subd. 15.

- ***A utility franchise agreement.***

***Procedure.*** The following must occur to use this exception:

- i. The council must approve the franchise agreement by unanimous vote.
- ii. The interested officer must abstain from voting on any franchise matters.
- iii. The reason for the interested councilmember's abstention must be recorded in the meeting minutes.

Minn. Stat. § 471.88,  
subd. 17.

- ***An application for a federal or state grant.***

**Procedure.** The following must occur to use this exception:

- i. The grant must be for housing, community, or economic development.
- ii. The interested officer must abstain from voting on measures related to the grant.

Minn. Stat. § 471.88,  
subd. 18.

- ***Loans or grants from certain federal funding programs that benefit officers of small cities in St. Louis County.***

**Procedure.** The following must occur to use this exception:

- i. The city must have a population of 5,000 or less and be located in St. Louis County.
- ii. The city must be administering a loan or grant program with community development block grant funds or federal economic development administration funds for property owners in the city.
- iii. The officer receiving the loan or grant must disclose in the official minutes that they have applied for the funds.
- iv. The interested officer must abstain from voting on the application.

Minn. Stat. §471.88,  
subd. 19.

- ***A loan from an HRA to an HRA officer.***

**Procedure.** The following must occur to use this exception:

- i. The loan must be from state or federal loans or grants administered by the HRA.
- ii. The public officer must first disclose as part of the official minutes that they have applied for the funds.
- iii. The public officer must abstain from voting on the application.

## **H. Statutory cities**

Minn. Stat. § 412.311.

Statutory cities must consider an additional law. The law provides that no member of a statutory city council may be directly or indirectly interested in any contract the council makes, except for the limited exceptions discussed previously. This law may apply to some situations where the general law does not. For example, even though the actual contract is not made with a councilmember, the fact that he or she has an indirect interest in it could violate this law.

## **I. Home rule charter cities**

[Minn. Stat. § 471.881.](#)

Many home rule charters contain provisions on conflict of interest in contracts. Some of these go beyond the statute to include any city official, even though the official has no part in making the contract. These charter provisions may apply to situations where the statute does not. However, the exceptions discussed previously apply to all cities, despite any other statute or city charter. (Because charter provisions vary from city to city, they are not covered in this document.)

Some home rule charters contain provisions preventing all officers and employees from being interested in a contract with the city. Such a provision evidently applies to every city officer or employee whether or not he or she has a part in making contracts.

## **J. Specific kinds of contracts**

A.G. Op. 90a-2 (April 14, 1960); A.G. Op. 90E-5 (Aug. 30, 1949).

The unlawful interest statutes apply to all kinds of contracts, formal or informal, for goods and services. The statute applies not only when the city is the buyer, but also when the city is the seller.

### **1. Prohibited interest**

A.G. Op. 90E-1 (May 12, 1976).

The law would appear to prohibit a contract with a public official who has had the opportunity to influence the terms of the contract or the decision of the governing body.

[Minn. Stat. § 471.88, subd. 5.](#)

See Part V - *Incompatibility of offices.*

Even when a contract is allowed under one of the exceptions, such as for a “contract for which bids are not required by law” (which appears to include an employment contract), council members should be cautious. Employing a councilmember as a city employee may still be prohibited under the “incompatibility of offices” doctrine.

A.G. Op. 90a-1 (May 16, 1952).

A.G. Op. 90b (Aug. 8, 1969).

The attorney general has advised that a councilmember who holds stock in a corporation that enters into a contract with the city has an unlawful interest and that a councilmember who is a subcontractor on a contract has an unlawful interest. The attorney general has also advised that a member of a governing body that receives a percentage of the money earned by a court-reporting firm for jobs done under a contract with the city has an unlawful interest.

A.G. Op. 90-E-5 (Nov. 13, 1969).

On the other hand, the attorney general has advised that if a councilmember is an employee of the contracting firm and his or her salary is not affected by the contract, the council may determine that no personal financial interest exists. Thus, such a contract may be made and enforced in a home rule charter city with no charter provisions prohibiting direct or indirect interest.

*Singewald v. Minneapolis Gas Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966); A.G. Op. 90a-1 (Oct. 7, 1976).

The Minnesota Supreme Court has held that employment by a company the city contracts with may give a councilmember an indirect interest in the contract. However, a more recent attorney general opinion concluded it is unclear whether mere employment always gives rise to a conflict of interest.

A.G. Op. 90a-1 (Oct. 7, 1976).

The attorney general has said that factors other than employment may have to be considered to determine whether a prohibited interest is present. The attorney general concluded that a council may contract with a councilmember's employer if the following criteria are met:

- The councilmember has no ownership interest in the firm.
- The councilmember is neither an officer nor a director.
- The councilmember is compensated with a salary or on an hourly wage basis and receives no commissions, bonus or other remuneration.
- The councilmember is not involved in supervising the performance of the contract for the employer and has no other interest in the contract.

More difficult questions sometimes occur when a councilmember takes office after a city has entered into a contract. If no conflict of interest can develop between the councilmember's public duty and his or her private interest in the contract during the contract, the councilmember can probably serve. However, if a conflict of interest can develop, the interested member may be prohibited from serving on the council. The attorney general has issued mixed opinions concerning the legality of these types of situations.

A.G. Op. (April 1, 1975) (informal letter opinion).

In an informal letter opinion, the attorney general said the director of a malting company could assume office as a councilmember even though the city had entered into a 20-year contract with the company to allow it to use the city's sewage disposal plant. The contract also fixed rates for service subject to negotiation of new rates under certain circumstances. The attorney general said the councilmember could continue to serve as long as no new negotiations were required. However, no new agreement could be entered into as long as the interested councilmember held office.

A.G. Op. 90E-1 (May 12, 1976).

The law apparently prohibits making a contract with any public official who has had the opportunity to influence its terms. The attorney general has advised that a former councilmember could not be a subcontractor on a municipal hospital contract if he was a councilmember when the prime contract was awarded.

A.G. Op. 90a-1 (March 30, 1961).

However, in a different opinion, the attorney general advised that a councilmember was eligible for city office even though the councilmember was entitled to commissions on insurance premiums payable by the city. In this instance, the insurance contract was entered into before the person became a councilmember.

The assumption of office by someone with a personal financial interest in an already existing contract raises concerns about possible conflicts of interest during the performance of the contract. In doubtful cases, the person faced with a possible conflict of interest situation should seek a legal opinion before assuming city office.

## **2. Employment of elected official by city**

The League is often asked if an elected city official can also be employed by the city. There are several issues that must be considered to determine whether this is permissible.

See Part V - *Incompatibility of offices.*

First, it must be determined if the two positions are incompatible. If the two positions are incompatible, the individual may not serve in both positions.

See Part III - A - *Exceptions and the procedures to use them.*

If the two positions are not incompatible, it must then be determined if there is an exception to the conflict of interest laws that allows the employment contract to be made. Even if an employment situation does not result in a formal written contract, the employment arrangement might be viewed like a contract under the conflict of interest law.

[Minn. Stat. §§ 471.88, subd. 5; 471.345](#); See League research memo [Competitive Bidding Requirements in Cities](#) (130B1.3) for more information.

There is an exception to the conflict of interest law that allows a contract to be made with an interested official if the contract is not required to be competitively bid. This exception appears to permit a city to hire an elected official as an employee, since contracts for professional services and employment are not required to be competitively bid. A city may want to seek a legal opinion if it is unsure whether this exception applies to a particular situation.

Also see Part V - *Incompatibility of offices.*

A.G. Op. 358-e-4 (Jan. 19, 1965); A.G. Op. 358-e-9 (April 5, 1971); A.G. Op. 90-E (April 17, 1978).

It is also not clear whether this statutory provision provides an exception to the common law incompatibility rules. The attorney general seemed to think that it did in a 1965 opinion that considered a situation involving a councilmember serving as a city volunteer firefighter. However, later attorney general opinions have not always been consistent in this interpretation, at least with regard to elected officials who are also firefighters. Although fact differences in these other attorney general opinions may partially explain the different results, a city may still want to get an opinion from its city attorney or from the attorney general if it is considering whether a particular city position would be incompatible with an elected office.

Also see Part V - D - *Offices that have been found incompatible.*

### **3. Validity of contracts with relatives of city officials**

See Part IV - Conflict of interest in non-contractual situations.

The conflict of interest laws do not address family relationships as constituting possible conflicts. The courts of other states generally have held that family relationship alone has no disqualifying effect on the making of a contract. There must be proof that a councilmember has a financial interest in the contract. Cases dealing with non-contractual situations are similar. In the cases dealing with non-contractual situations, the mere fact of family relationship, other than that of husband and wife, has not generally resulted in a disqualifying interest.

[Minn. Stat. § 519.02.](#)

While it is easier to find that a councilmember has a personal financial interest in a contract with his or her spouse, a marital relationship alone may not make the contract invalid. In other states, courts have held that a public body is not prohibited from appointing the spouse of one of its members as long as under the state law the spouse's earnings are his or her own property.

A.G. Op. (June 28, 1928); A.G. Op. (July 14, 1939); A.G. Op. 90-C-5 (July 30, 1940).

A contract with the councilmember's spouse in a statutory city may involve a violation of the law if the councilmember has a direct or indirect interest in it. The attorney general has construed the law broadly to hold such contracts invalid. If the money earned under the contract is used to support the family, the councilmember derives some benefit. In this type of situation, the attorney general has held that there is an indirect interest in the contract on the part of the councilmember. Therefore, the contract is void.

A.G. Op. 90-b (April 5, 1955).

The law gives husbands and wives various interests in their spouse's estate. The attorney general once held these interests alone would prohibit contracting with the spouse of a city official. However, in more recent opinions, the attorney general has taken the position that each case turns on its individual facts. In short, the mere fact of the relationship does not affect the validity of the contract.

[Minn. Stat. § 519.05.](#)

A.G. Op. 90a-1 (Dec. 9, 1976).

Under existing law, spouses are liable for each other's support for necessities. If a spouse who contracts with the city uses the earnings from the contract individually and not to support the family, the contract probably would not be invalid simply because the spouse is a councilmember. However, if the facts tend to show otherwise, the legality of the contract will be doubtful. The attorney general has advised local governing bodies to avoid the suspicion and criticism that may result from such contracts. Although a prohibited interest in contracts does not necessarily arise when the spouse of a city employee is elected councilmember, the opinion carefully avoids any statement about future action of the council on the existing employment relationship.

[Minn. Stat. § 363.03, subd. 1\(2\).](#)

Also see Part IV - C - Family connections.

It should be noted that the Minnesota Human Rights Act prohibits discrimination in employment based upon marital status. Cities should exercise caution when making inquiries into the marital status of employees or applicants for city positions.

## **4. Sale of government-owned property**

### **a. In general**

[Minn. Stat. § 15.054.](#)

Officers and employees of the state or its subdivisions are prohibited from selling government-owned property to another officer or employee of the state or its subdivisions. However, the law does not apply to the sale of items acquired or produced for sale to the general public in the ordinary course of business. In addition, the law allows government employees and officers to sell public property if the sale is in the normal course of their duties.

## **b. Exceptions**

[Minn. Stat. § 15.054.](#)

There are also exceptions to this prohibition. Personal property owned by the state or its subdivisions and no longer needed for public purposes can be sold to an employee (but not to an officer) under certain conditions. These conditions are:

- There has been reasonable public notice and the property is sold by public auction or sealed bid.
- The employee is the highest responsible bidder.
- The employee who buys the property must not be directly involved in the auction or sealed response process.

There is no exception that allows the sale of city-owned real estate to a city officer or employee.

## **K. Contracts made in violation of the statutes**

[Minn. Stat. § 471.87.](#)

[Minn. Stat. § 609.0341, subd. 1.](#)

A.G. Op. 90a-1 (April 22, 1971).

A public officer who violates the conflict of interest law is guilty of a gross misdemeanor and can be fined up to \$3,000 and imprisoned up to one year. Any contract made in violation of the conflict of interest law is generally void. Public officers, who knowingly authorize a prohibited contract even though they do not receive personal benefit from it, may also be subject to the criminal penalties of state law.

*City of Chaska v. Hedman*, 53 Minn. 525, 55 N.W. 737 (1893); *Currie v. Sch. Dist. No. 26*, 35 Minn. 163, 27 N.W. 922 (1886); *Bjelland v. City of Mankato*, 112 Minn. 24, 127 N.W. 397 (1910).

When a city enters into a contract that has subject matter beyond the city's corporate powers, there will generally be no city liability for the contract. Even when the contract is within the city's corporate powers, any contract made in violation of the unlawful interest statutes is generally void. As a result, such a contract cannot be the basis of a lawsuit. However, a city may be enjoined from performing an illegal contract.

*Stone v. Bevans*, 88 Minn. 127, 92 N.W. 520 (1902); *City of Minneapolis v. Canterbury*, 122 Minn. 301, 142 N.W. 812 (1913); *Currie v. Sch. Dist. No. 26*, 35 Minn. 163, 27 N.W. 922 (1886); *Singewald v. Minneapolis Gas. Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966).

If a contract is invalid, it does not matter that the interested councilmember did not participate in the vote or discussion. Likewise, it does not matter that the interested councilmember's vote was not essential to the council's approval of the contract. It is the existence of the interest that is important. Even if the councilmember acted in good faith and the contract was fair and reasonable, the contract is generally void if it is prohibited because of a conflict of interest.

Stone v. Bevans, 88 Minn. 127, 92 N.W. 520 (1902).

When a prohibited contract is made with an interested councilmember, the councilmember may not recover on the contract. Nor may a councilmember recover value on the basis of an implied contract. If a councilmember has already received payment, restitution to the city can be compelled. For example, if the mayor is paid for services to the city under an illegal contract, a taxpayer could sue to recover the money for the city. It does not matter that the mayor was not present at the meeting at which the agreement for compensation was adopted.

Frisch v. City of St. Charles, 167 Minn. 171, 208 N.W. 650 (1926); Mares v. Janutka, 196 Minn. 87, 264 N.W. 222 (1936).

If a councilmember has made an unlawful sale of goods to the city and the goods can be returned, a court will probably order it and prohibit any payment for the goods. This might be ordered when a lot has been purchased from a councilmember and no building has been erected on it, or if supplies, such as lumber, have been bought and not yet used. However, if the goods cannot be returned and if the contract was not beyond the powers of the city and there was no fraud or collusion in the transaction, the court will determine the reasonable value of the property and permit payment on the basis of the value received.

In case of doubt, it is wise to assume a city cannot contract with one of its officers. If the contract is necessary, a legal opinion or court ruling should be secured before proceeding. The safest course of action is to assume that a contract prohibited under the conflict of interest statutes is void, whether or not the interested councilmember has participated in the transaction.

## **Part IV. Conflict of interest in non-contractual situations**

### **L. In general**

While the laws discussed previously relate only to contracts with interested officials, courts throughout the country, including the Minnesota Supreme Court, have followed similar principles in non-contractual situations.

56 Am. Jur. 2d  
*Municipal Corporations* § 142.

Any official who has personal financial interest in an official non-contractual action is generally disqualified from participating in the action. This is especially true when the matter concerns the member's character, conduct or right to hold office. Another situation may be when the official's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

In applying the disqualification rules in non-contractual situations, the courts have sometimes made a distinction between judicial and quasi-judicial acts on the one hand, and legislative and administrative acts on the other. However, this distinction has not been consistently applied in particular cases.

In general, when an act of a council is judicial, no member who has a personal interest may take part. Some would argue that the member's participation makes the decision voidable, even if his or her vote was not necessary to make the decision. Some of the cases discussed in the next section indicate how this distinction has been applied.

When there is a disqualifying personal interest, the action is not necessarily void. In contrast to the rules regarding conflict of interest in contract situations, the official action may be valid if the disqualified official does not participate and the required number of non-interested council members approve the action.

## M. Disqualifying interest factors

The Minnesota Supreme Court has listed several factors to consider in determining if a disqualifying interest exists:

- *The nature of the decision.*
- *The nature of the financial interest.*
- *The number of interested officials.*
- *The need for the interested officials to make the decision.* In one case, it was held that when an administrative body had a duty to act on a matter and was the only entity capable of acting on the matter, the fact that members may have had a personal interest in the result did not disqualify them from performing their duties. In that case, council members owned stock in a corporation seeking a special use permit.
- *Other means available.* Another relevant factor is whether or not other means are available to ensure officials will not act arbitrarily to further their self interest, such as an opportunity for review. In one case, the court took into account the fact that a decision by a board of managers could be appealed to the state water resources board. The court referred to the same factor in another decision regarding a town board decision to establish a road. In upholding the town board's decision, the court said that the availability of appeal to the district court would adequately protect owners of the affected land from any possible prejudice.

*Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

*Gonsalves v. City of Dairy Valley*, 71 Cal. Rptr. 255 (Cal. Ct. App. 1968).

*Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

*Township Bd. of Lake Valley Township v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975).

## **N. Specific situations**

There is far from complete agreement among the various courts on the kinds of interest and the situations that prevent an interested official from taking part in non-contractual official actions. A summary of some of these situations follows:

### **1. Determination of an official's right to office**

On the theory that no person should be the judge of his or her own case, courts have generally held that an officer may not participate in proceedings involving his or her status. Thus, city council members are probably prohibited from judging themselves on an offense in which the majority of the council participated. Likewise, determination of a councilmember's residency may be one such issue from which an interested officer should abstain.

### **2. Self-appointment**

[Minn. Stat. § 471.46.](#)

[Minn. Stat. § 415.15.](#)

Generally, city officials may not appoint a councilmember to an elected position, even if he or she resigns before the appointment is made. However, a councilmember may be appointed to the position of mayor or clerk, but the councilmember may not vote on the appointment. Likewise, resigning council members may not vote on their successors.

See Part V -  
Incompatibility of  
offices.

In the situation of appointment to a non-elective position, the general rule is that the official has a self-interest and he or she is disqualified from participating in the decision. Whether the councilmember serving the city in a second function creates an incompatibility must also be considered.

### **3. Fixing official's own compensation**

[Minn. Stat. § 415.11.](#)

State law authorizes a council of any second, third or fourth class city in Minnesota to set its own salary and the salary of the mayor by ordinance. However, the change in salary cannot begin until after the next regular city election. Since every councilmember has a personal interest in determining his or her compensation, the need for interested officials to make the decision is determinative in this situation.

A special situation is involved in setting the clerk's salary in a Standard Plan statutory city. In these cities, the clerk is elected and is thus a voting member of the council. The other four council members may vote on the clerk's compensation without any disqualifying self-interests. However, it is probably best for the clerk not to vote on his or her own salary.

### **4. Family connections**

A.G. Op. (April 14, 1975) (informal letter opinion).

In an informal letter opinion, the attorney general has advised that a councilmember was not disqualified from voting on a rezoning because his father owned legal title to the tract in question.

A.G. Op. 90a-1 (Dec. 9, 1976).

The attorney general has also advised that a prohibited interest does not necessarily arise when the spouse of a city employee is elected mayor. The opinion carefully avoids any statement about future action of the council on the existing employment relationship.

[Minn. Stat. § 363.03, subd. 1\(2\)](#); Also see Part III - D - Validity of contracts with relatives of city officials.

It should be noted that the Minnesota Human Rights Act prohibits discrimination in employment based upon marital status. Cities should exercise caution when making inquiries into the marital status of employees or applicants for positions with the city.

## 5. Business connections

A.G. Op. 430 (April 28, 1967).

Other types of business interests may also be prohibited, indirect interests even though there is not a personal financial interest under the general law. The attorney general has advised that a housing authority commissioner had a conflict of interest when the commissioner was also a foreman who would aid a contractor in making a bid to the housing authority.

A.G. Op. 90e (Aug. 25, 1997).

In a different opinion, the attorney general found that a mayor or councilmember would not be disqualified from office because he was an employee of a nonprofit corporation that provided public access cable service to the city. However, the attorney general also concluded that the individual must abstain from participating in any actions related to the cable franchise.

## 6. Land issues

Since a city council must deal with land matters, it is almost inevitable one of these decisions may affect property that is owned or used by one of its members.

### a. Local improvements and special assessments

*Petition of Jacobson*, 234 Minn. 296, 48 N.W.2d 441 (1951); *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

A councilmember owning land to be benefited by a local improvement is probably not prohibited from petitioning for the improvement, voting to undertake it, or voting to adopt the resulting special assessment. Although one Minnesota decision took a different view on a county ditch proceeding, it seems to have been sharply limited as a precedent by a later case. The two cases can also be distinguished on their facts.

*Petition of Jacobson*,  
234 Minn. 296, 48  
N.W.2d 441 (1951).

The first case concerned a proposed county ditch that bypassed a county board member's property. Although the board member participated in preliminary proceedings before the board regarding the feasibility of the improvement, he did not attend the final hearing. The court vacated the county board's order establishing the proposed ditch since the preliminary proceedings may have had a substantial effect on later actions taken at the final hearing. The court also said the board member should not have participated in any of the proceedings regarding the project.

*Lenz v. Coon Creek  
Watershed Dist.*, 278  
Minn. 1, 153 N.W.2d  
209 (1967).

The court in the second case found there was no disqualifying conflict of interest when four of the five managers of a watershed district owned land that would be benefited by a proposed watershed district improvement project. The court recognized the situation was similar to those where members of a city council assess lands owned by them for local improvements. As a result, the court found this potential conflict of interest did not disqualify the district board members from participating in the improvement proceedings.

It is possible a councilmember's property ownership might result in a more favorable treatment of that property in an assessment project. If that happened, the assessment might be challenged for arbitrariness and set aside whether or not the councilmember participated in the assessment proceedings.

## **b. Zoning**

A.G. Op. 59a-32 (Sept.  
11, 1978).

The attorney general has advised that a council is not prevented from rezoning property owned by a councilmember or by his or her client. However, the councilmember may not participate in the council proceedings involving the rezoning.

A.G. Op. 471-f (Sept.  
13, 1963).

In an earlier opinion, the attorney general said it was a question of fact whether a town board member had a disqualifying interest for having sold land that was the subject of rezoning. However, the attorney general appeared to assume that if the board member had a sufficient interest in the land, the member would be disqualified from voting on the rezoning.

## **i. Property ownership**

Whether or not property ownership disqualifies a councilmember from participating in council action will depend, to some extent, on the amount of that interest compared to all land affected by the decision. At one extreme is adoption of a new zoning ordinance or a comprehensive revision of an existing ordinance that may have an impact on all property in the city. In this situation, the interest is not personal and the councilmember should be able to participate. If this wasn't allowed, no such ordinance could ever be adopted since all council members may be property owners.

At the other extreme is the application for a zoning variance or special use permit applying only to a councilmember's property. In this instance, there is such a specific interest that it will probably disqualify the member from participating in the proceedings. However, the councilmember should still be able to submit the required application to the city.

Between these two extremes are those proceedings affecting some lots or parcels, only one of which a councilmember owns. In such cases it is a question of fact whether the councilmember is disqualified from voting. If the councilmember chooses to vote, the council must decide whether the member should be disqualified—a decision which is subject to review in the courts if challenged. There will be many situations where the right to vote is doubtful enough that an interested councilmember should refrain from participating.

## **ii. Condemnation**

*Webster v. Bd. of  
County Comm'rs of  
Washington County*, 26  
Minn. 220, 2 N.W. 697  
(1897).

There is little doubt a councilmember's ownership of land is so direct and significant as to preclude his or her participation in a resolution to condemn the land. The Minnesota Supreme Court has not ruled directly on this question. However, it did not disqualify a county board member from participating in condemnation proceedings to establish a highway when the board member owned land adjoining the proposed highway. The court suggested the decision might have been different if the owner had been entitled to damages if the highway had gone through his property.

## **iii. Church affiliation**

*Rowell v. Bd. of  
Adjustment of the City  
of Moorhead*, 446  
N.W.2d 917 (Minn.  
App. 1989).

The Minnesota Court of Appeals held that a zoning board member who was also a member of a church was not disqualified from voting on a zoning variance requested by that church. The court found the nature of the financial interest could not have influenced the voting board member. The person's membership in the church, without evidence of a closer connection, was not a sufficiently direct interest in the outcome of the matter to justify setting aside the board's zoning action.

## **c. Streets**

### **i. Establishing streets and highways**

*Webster v. Bd. of  
County Comm'rs of  
Washington County*, 26  
Minn. 220, 2 N.W. 697  
(1897).

It appears that a councilmember who owns land near an area where a street may be opened would not be prohibited from voting on the matter. The Minnesota Supreme Court has held that a county board member who owned land adjoining a proposed county highway did not have a disqualifying interest preventing him from voting on the establishment of the highway. The board member's interest was similar to that of the rest of the public and differed only in degree. A different decision may have been reached had the highway gone through any of the commissioner's land.

*Township Bd. of Lake Valley Township v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975).

The Minnesota Supreme Court also refused to disqualify a town board supervisor that asked a landowner to circulate a petition for a road. The court reasoned that by its very nature, the decision to establish a town road is of interest to all local citizens, including town board members, who often may be in the best position to be aware of the need for a road. The court also stated that the ability of affected property owners to appeal to the district court would adequately protect them from any possible prejudice.

## ii. Street vacation

A.G. Op. 396g-16 (Oct. 15, 1957); *See also, Petition of Jacobson*, 234 Minn. 296, 48 N.W.2d 441 (1951).

It is arguable that a street vacation is not essentially different from the establishment of a street, where abutting owners have been held not to have a disqualifying interest. However, the attorney general advised that a councilmember who had an interest in property abutting a street proposed for vacation could not participate in the vacation proceedings.

## 7. Urban renewal

An interest in property subject to an urban renewal decision may be grounds for disqualification. However, when the property is within the area of a larger urban renewal program, but not in the project area subject to the decision, it is arguable the councilmember would not be disqualified from voting. Since there have been no Minnesota cases addressing this issue, councilmembers with these types of interests may wish to abstain from voting on these matters or seek an attorney general opinion regarding the legality of their participation.

## 8. Licenses

Although there have been no Minnesota cases directly on the subject, it seems obvious that when a councilmember is an applicant for a license to be granted by the council, there is enough of a personal financial interest that the member should not take part in the decision on the application.

A.G. Op. 218-R (April 29, 1952).

If a general licensing ordinance is the subject of the action, even a councilmember who does not hold a license may have a possible conflict of interest that could disqualify him or her from voting. The attorney general said that a councilmember who was a part-time employee of a liquor licensee could not vote on the question of reducing the liquor license fee if it could be shown that the councilmember was personally interested. For example, if the fee reduction would affect the councilmember's compensation or continued employment, he or she would obviously have a personal financial interest in the decision. However, whether an individual's personal interest is sufficient to disqualify him or her from voting on the decision is a fact question that must be determined on a case-by-case basis.

*E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815 (Minn. 1985).

In a similar case, the Minnesota Supreme Court held that since a town board member owned property across from a bar that was subject to a liquor license renewal decision, he was disqualified from voting on the license renewal. The town board member stated his property had been devalued by \$100,000 since the bar opened, and he was elected to the board based largely on his opposition to the bar. The court stated, “A more direct, admitted, financial interest is hard to imagine.”

[Minn. R. § 7515.0430, subp. 5.](#)

A state rule prohibits a councilmember from voting on a liquor license for a spouse or relative. The rule does not define who is included as a “relative,” so cities may need to consult with their city attorney for guidance in specific situations.

## O. Effect of disqualifying interest on action

*Nodes v. City of Hastings*, 284 Minn. 552, 170 N.W.2d 92 (1969).

A contract that is prohibited due to a conflict of interest is generally void. However, actions taken in a non-contractual situation, where a councilmember has a disqualifying interest, may be valid if the result would have been the same without the interested official’s vote. For example, the Minnesota Supreme Court considered a case involving a decision by a three-member civil service commission to terminate a police officer for failing to pay his financial debts. The court held that it would have been a “better practice” for the commission member who had been a creditor of the officer to have disqualified himself and abstained from voting. However, the court held that the interested commission members’ participation in a unanimous decision did not invalidate the commission’s decision.

*1989 Street Improvement Project v. Denmark Township*, 483 N.W.2d 508 (Minn. App. 1992).

Council members who have a disqualifying interest in a matter are generally excluded when counting the number of councilmembers necessary for a quorum, or for the number necessary to approve an action by a four-fifths vote, such as approving a special assessment.

## P. Conflict of interest checklist

- Consult with the city attorney.
- Disclose the interest.
  - i. Make disclosure at the earliest stage preceding the discussion.
    - Make oral disclosure to the governing body or board.
    - Make written disclosure.
  - ii. Don’t participate in discussions leading up to the decision.
- Don’t vote or take any official action unless the city attorney decides there is no prohibited conflict of interest.

- Don't influence others.
  - i. Don't participate in the discussion, either at the time of the vote or earlier.
  - ii. Leave the room when the governing body is discussing the matter.

## Part V. Incompatibility of offices

### Q. In general

The question of whether a city official can also serve the city in some other capacity is quite complicated. One must look at both the statutory law, and the common law that has been developed through Minnesota court decisions.

All individuals in elected office are prohibited from holding incompatible offices. In addition, many appointed officials may need to consider this law if taking a position that may conflict with their city responsibilities.

*See McCutcheon v. City of St. Paul*, 216 N.W.2d 137 (1974).

The common law doctrine of incompatibility applies to the functions of two inconsistent offices. However, there is no clear definition of what constitutes an "office" for the purpose of this law. Certainly it would include all elected offices. It may also include appointed offices such as city administrators, managers, and police chiefs. Generally, an office has greater responsibility, importance, and independence than mere city employment.

*State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (1886).

State laws generally do not prevent a person from holding two or more governmental positions. However, without specific statutory authority, government officials cannot hold more than one position if the functions are incompatible or if the jobs create a conflict between two different public interests.

5 U.S.C. §§ 7323(a)(3); 7322(2). (More information about the Hatch Act (5 U.S.C. §§ 7321-7326) is available at: [www.osc.gov/hatchact.htm](http://www.osc.gov/hatchact.htm)).

Federal employees are generally prohibited from being candidates in local partisan elections. An election is considered "partisan" if candidates are elected as representing political parties. State employees generally can run for and hold local elected office as long as there is no conflict with their regular state employment. The Minnesota Department of Employee Relations will determine whether a conflict exists.

### R. Elements of incompatible offices

Positions are generally incompatible when one or more of the following conditions exist:

*See Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (1886); *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); [Minn. Stat. § 471.46](#); A.G. Op. No. 256 (1936); A.G. Op. No. 235 (1928); A.G. Op. No. 234 (1928).

- If the holder of one position (or the group or board of which the person is a member):
  - i. Hires or appoints the other.
  - ii. Sets the salary for the other.
  - iii. Performs functions that are inconsistent with the other.
  - iv. Makes contracts with the other.
  - v. Approves the official or fidelity bond of the other.
- If a specific statute or charter provision:
  - i. States that one person may not hold two or more specific positions.
  - ii. Requires that the officer may not take another position.
  - iii. Requires that the officer devote full-time to the position.

## S. Violation of the incompatibility law

A.G. Op. 471-M (Dec. 11, 1957).

An individual generally can run for election to a position that is incompatible with the position the person already holds without resigning from the first position. However, when an official qualifies for a second and incompatible position (by taking an oath and filing a bond, if necessary), he or she automatically resigns from the first position, which then becomes vacant.

## T. Specific offices

It is important to remember that incompatibility depends on the nature of the offices and their relationship to one another. A city official who is considering seeking an additional office should obtain a legal opinion on the compatibility of the two offices. The attorney general has found the following offices to be incompatible:

A.G. Op. 358e-7 (March 5, 1965).

A.G. Op. 358e-9 (Dec. 13, 1939).

A.G. Op. 218-R (Feb. 25, 1946).

A.G. Op. 358e-3 (March 6, 1946).

A.G. Op. 358-e-9 (April 5, 1971).

- Councilmember and city treasurer
- Mayor and school board member
- Mayor and municipal liquor store manager.
- Councilmember and city attorney
- Councilmember and fire chief

A.G. Op. 358-e-4 (Jan. 19, 1965); [Minn. Stat. § 471.88, subd. 6.](#)

In 1965, the attorney general advised that a councilmember could also be a member of a volunteer city fire department under the exception to the conflict of interest law that permits contracts with a volunteer fire department for payment of compensation or retirement benefits. But in 1971, the attorney general advised that the fire chief of a municipal fire department automatically vacated the office of fire chief when he accepted a seat on the city council. This opinion did not mention the exception listed in the conflict of interest law or the 1965 opinion.

A.G. Op. 358-e-9 (April 5, 1971).

A.G. Op. 90-E (April 17, 1978).

In 1978, the attorney general considered the issue again and advised that the exception to the conflict of interest law allows a councilmember to be a member of an independent volunteer fire department when a contract for compensation or retirement benefits is negotiated, as long as the procedural requirements for the exception are followed. The attorney general also explained that the reason for the different results in the two earlier opinions was because the 1965 opinion involved a fire department member who was not an officer and the 1971 opinion involved a fire department member who was the fire chief.

[Minn. Stat. § 412.152.](#)

In 1997, the Minnesota Legislature attempted to clarify the issue by creating a statute to offer some guidance regarding the positions of mayor and fire chief. The statute says that a statutory city mayor may also be the fire chief of an independent, nonprofit firefighting corporation that serves the city. Although the statute is specifically for statutory cities, home rule charter cities may be able to use it if their charters are silent on the matter. Basically, the statute says the mayor and fire chief positions are not incompatible as long as the following conditions are met:

[Minn. Stat. § 410.33.](#)

- The mayor does not appoint the fire chief.
- The mayor does not set the salary or the benefits of the fire chief.
- Neither office performs functions inconsistent with the other.
- Neither office (in its official capacity) contracts with the other office.
- The mayor does not approve the fidelity bond of the fire chief.

The statute remains unclear on several points, however. It does not address council positions other than the mayor. It also appears to be limited to independent, nonprofit fire departments, so city departments (whether volunteer or salaried) are not addressed. And although it outlines general criteria under which there will not be incompatibilities, there is still some vagueness regarding what functions between the two offices would be considered inconsistent.

Because each city may have a different relationship with its fire department, a city may want to get a legal opinion from its attorney or from the attorney general before allowing a councilmember to serve as a volunteer firefighter with any sort of supervisory powers.

The attorney general has found the following offices to be compatible:

A.G. Op. 358e-9 (Feb. 10, 1912).

- Councilmember and county treasurer

A.G. Op. 90e (Aug. 25, 1997).

- Councilmember and officer of nonprofit, public-access, cable-service provider

A.G. Op. 358e-3 (July 29, 1997).

- Assistant county attorney and city attorney

A.G. Op. No. 420 (1921).

- City attorney and charter commission member

See [Compatibility of Offices](#) (House Research Information Brief).

In conclusion, whether two offices are incompatible will depend upon the responsibilities of each of the offices and their relationship. A city with questions may wish to contact the League at (651) 281-1200 or (800) 925-1122 for further information, or secure a legal opinion from its city attorney or the attorney general. The League has available a document that lists many of the different public offices/employment and whether they have ever been found to be incompatible.

# Part VI. Model forms

## Form 1

### Model resolution to contract with a councilmember (under Minn. Stat. §§ 471.88, subd. 5 and 471.89, subd. 2)

Whereas, the city of \_\_\_\_\_ desires to purchase the following (*goods / merchandise / equipment / services*): (*describe in detail*);

And Whereas, (*name of interested official*) is the (*office held by interested official*) of the city and will be financially interested in the contract;

And Whereas, it is determined that the contract price of \$ \_\_\_\_\_ is as low as, or lower than, the price at which the goods can be obtained elsewhere at this time;

And Whereas, the contract is not one that is required to be competitively bid;

Now be it resolved by the city of \_\_\_\_\_, Minnesota that the city clerk is directed to make the above-mentioned purchase on behalf of the city from (*name of interested officer*) for a price of \$ \_\_\_\_\_. It is also resolved that the mayor and city clerk are directed to issue an order-check to pay the claim on the filing of an affidavit of official interest by the interested official as required under Minn. Stat. § 471.89.

This resolution is passed to comply with the provisions of Minn. Stat. §§ 471.87-.89.

Passed by unanimous vote of the city council on (*day and date*).

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

## Form 2

### Model resolution ratifying contract in emergency (under Minn. Stat. §§ 471.88, subd. 5 and 471.89, subd. 2)

Whereas, on (*day and date*), the city of \_\_\_\_\_ purchased the following (*goods / merchandise / equipment / service*) from (*name of company or person with whom the contract was made*): (*specify the type of goods, merchandise, equipment, or services that were bought*);

And Whereas, (*name of interested official*) was the (*office held by interested official*) on this date and was personally interested financially in the contract;

And Whereas, the purchase could not be authorized in advance because of the following emergency: (*specify emergency*);

And Whereas, the contract price of \$\_\_\_\_\_ paid for such goods is as low, or lower than the price at which they could be obtained elsewhere at the time the purchase was made;

And Whereas, the contract is not one that is required to be competitively bid;

Now be it resolved by the city of \_\_\_\_\_, Minnesota that the above-mentioned purchase by the city and the claim of the vendor based on it are confirmed and the mayor and clerk are directed to issue an order-check to pay the claim on the filing of an affidavit of official interest by the interested officer as required under Minn. Stat. § 471.89.

This resolution is passed to comply with the provisions of Minn. Stat. §§ 471.87-.89.

Passed by unanimous vote of the council on (*day and date*).

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

# Form 3

## Model affidavit of official interest in claim (under Minn. Stat. §§ 471.88, subd. 5 and 471.89, subd. 3)

STATE OF MINNESOTA     )  
COUNTY OF \_\_\_\_\_)

I, (Name of interested officer), being duly sworn state the following:

- 1) I am (office held by interested official) of the city of \_\_\_\_\_, Minnesota.
- 2) On (day and date), the following (goods / merchandise / equipment / services) were furnished by (name of business or individual with whom the contract was made) to the city of \_\_\_\_\_: (specify the type of goods, merchandise, equipment, or services that were purchased).
- 3) The contract price for such (goods / merchandise / equipment / services) was \$ \_\_\_\_\_ and their reasonable value was \$ \_\_\_\_\_.
- 4) At the time such (goods / merchandise / equipment / services) were furnished to the city, I had the following personal financial interest in this contract: (specify the nature of the personal financial interest)

To the best of my knowledge and belief the contract price is as low as, or lower than the price at which the (goods / merchandise / equipment / services) could be obtained from other sources.

I further state that this affidavit constitutes a claim against the city for the contract price, that the claim is just and correct, and that no part of the claim has been paid.

(signature of interested official)

Subscribed and sworn to before me this \_\_\_\_\_ day of (month), (year).

(signature of notary)