

CONFLICTS OF INTEREST

LEGAL COMPLIANCE AUDIT GUIDE

CONFLICTS OF INTEREST

Introduction

Rule: A public officer authorized to take part in the making of a sale, lease, or contract shall not voluntarily have a personal financial interest in the transaction or personally benefit financially from it. Minn. Stat. § 471.87. The following persons are specifically forbidden from having any interest in any contract made by their respective governing bodies:

1. elected officers;
2. town supervisors and town board members;
3. county officials, county deputies, county clerks, and employees of such officials; or
4. school board members.

Exceptions: For practical reasons, the legislature has created certain limited exceptions to the general prohibition. Exceptions apply to port authorities, seaway port authorities, economic development authorities, watershed districts, soil and water conservation districts, towns, school districts, hospital districts, counties and cities. Minn. Stat. § 471.88. Part I of this questionnaire will assist you in making a determination as to whether an otherwise forbidden transaction fits within any of the statutory exceptions. Care should be taken to determine whether any exception considered applies to the entity and contract being audited.

For the purposes of this checklist, “interested officer” shall mean a public officer or employee, as listed above, who directly or through his or her spouse (see “Discussion” below) has a prohibited position or interest in either the entity making or the subject matter of the sale, lease, or contract with the governing body. Examples include:

1. officer;
2. director;
3. employee (see “Discussion” below);
4. partner;
5. owner (complete or partial); or
6. shareholder.

Discussion: The determination as to whether a particular transaction involves an “interested officer” often calls for a judgment on the part of the auditor. A helpful concept to remember for analysis is that it is a conflict of interest to be on both sides of a contract or transaction.

Most problems in this regard arise in the examination of the “interest” the public officer has in the person or entity making the contract with the governing body. Two frequent problem areas are:

1. Contracts with Officer’s or Employee’s Spouse or Family Member.

It is not a conflict of interest per se for a governing body to contract or otherwise economically transact with a member officer’s spouse or family member. However, if the facts indicate an economic benefit to the member officer as a result of the contract or transaction, a conflict of interest exists. For example, if a husband and wife, one of whom is a public officer, share a common pool of funds and likewise share debts, conflicts may exist because there is benefit to the public officer or employee flowing from the economic benefit to his or her spouse. Likewise, if a governmental officer or employee and his or her spouse, in fact, do not economically benefit from each other, a conflict may not exist. This analysis would apply to all familial relationships. The auditor will need to factually determine whether an emancipated child living away from home has a financial interest with his or her parents.

A provision regarding employee contracts involving spouses of school board members was enacted in 2008. See Minn. Stat. § 471.88, subd. 21. This provision has been added to the checklist.

2. Contracts with Companies in Which the Officer is an Employee.

If the involved governmental officer or employee is simply a company employee without managerial powers and receives the same salary or raise regardless of the company’s contract with the governing body, there probably is no conflict of interest. However, if said officer receives a bonus or commission or other benefit as a result of the contractual transaction between his or her company and the government entity, there is definitely a conflict of interest.

There are numerous aspects to be examined by the auditor in order to understand the totality of interests involved in a given contract or transaction between the governing body and an entity or person with a relationship to a member officer.

If, after review of the facts and applicable statutes, you are still unsure as to whether a particular set of circumstances constitutes a conflict of interest, you should contact an attorney for advice prior to preparing the “Audit Conclusion” at the end of this audit guide section.

Other Statutory References to Conflicts of Interest. In addition to the general statutory prohibition on conflicts of interest cited in the checklist, auditors should be aware that other statutory prohibitions and requirements exist with regard to certain types of municipal entities:

<u>Persons/Entities</u>	<u>Statute</u>
Public and local officials of metropolitan governmental units (as defined by Minn. Stat. § 10A.01, subds. 35, 22, and 24)	§ 10A.07
Housing and Redevelopment Authorities (commissioners and employees)	§ 469.009
Economic Development Authorities (commissioners and employees)	§ 469.098

Minn. Stat. Section	CONFLICTS OF INTEREST	Yes	No	Workpaper Reference
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Part I. Contracts Generally				
§ 471.87	- Unless a statutory exception applies, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit therefrom.			
	- The governing body may contract for goods or services with an interested officer only by unanimous vote. <u>See A, infra.</u> In addition to the unanimous vote, one of the statutory exceptions must apply. <u>See B, infra.</u>			
§ 471.88, subd. 1	A. Contract for Goods or Services/Unanimous Approval			
	1. If there were any sales, leases, or contracts between the governing body and an interested officer, was each contract a contract for goods or services? <u>and</u>			
	2. If there were any sales, leases, or contracts between the governing body and an interested officer, did the governing body approve the transaction by unanimous vote?			
	Note: All <u>members</u> present, except the interested officer, must vote in order to produce a unanimous vote.			
	B. Statutory Exceptions			
§ 471.88, subd. 2	1. Designation of Bank or Savings Association If the transaction involved the designation of a bank or savings association as an authorized depository for public funds and as a source of borrowing:			
	a. Did the interested officer disclose to the governing body that he or she was a director or employee of the bank or savings association?			
	b. Was such disclosure entered into the minutes of the governing body's meeting prior to the first designation of the bank or savings association as a depository or at the time of the interested officer's election, whichever was later?			
§ 471.88, subd. 3	2. Designation of Official Newspaper			
	If a transaction involved the designation of an official newspaper or publication of official matters therein:			
	a. Was the newspaper in which the officer had an interest the only newspaper complying with statutory or charter requirements relating to designation or publication?			
§ 471.88, subd.4	3. Stockholder of Cooperative Association If the transaction involved a contract with a cooperative association:			
	a. Was the officer a shareholder or stockholder and not an officer or manager of the cooperative association?			

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§ 471.88, subd. 5	4. Contracts That Do Not Need to Be Bid				
	If an interested officer entered into a contract for goods and services with the governing body:				
	a. Was the contract one that did not need to be bid?				
	(See discussion of contracts that are subject to bidding on page 4-1.) (If the interested officer is a school board member and employee of the district, <u>see</u> Part B.7., <i>infra</i> , "Employment Contracts with School Board Members." If the contract involves a class of employees that includes the spouse of a school board member; <i>see</i> Part B.12., <i>infra</i> , "School Board Member Spouse/Employee Class.")				
§ 471.89, subd. 2	b. Did the governing body, prior to performance of the contract, authorize the contract by adopting a resolution setting forth the essential facts and determining that the contract price was as low or lower than the price at which the commodity or service could be obtained elsewhere?				
§ 471.89, subd. 3	c. Prior to payment of the contract, did the interested officer file with the clerk of the governing body an affidavit stating:				
	(1) the name of the officer and office held;				
	(2) an itemization of the commodity or services furnished;				
	(3) the contract price;				
	(4) the reasonable value;				
	(5) the interest of the officer in the contract;				
	(6) that to the best of his/her knowledge and belief the contract price was as low or lower than the price at which the commodities or services could have been obtained from other sources?				
§ 471.89, subd. 2	d. If the contract was entered into under emergency conditions, did the governing body adopt such a resolution prior to payment of the claims in which the facts of the emergency are also stated?				
§ 471.88, subd. 6	5. Contract with Fire Department				
	If the governing body entered into a contract with a fire department in which an interested officer was a member:				
	a. Was the fire department a volunteer fire department?				
	b. Was the contract for payment of compensation or payment of retirement benefits?				

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§ 471.88, subd. 6a	6. Contract with Volunteer Ambulance Service				
	Was the contract with a volunteer ambulance service for the payment of compensation to its members or for payment of retirement benefits to these members?				
§ 123B.195	7. Employment Contracts with School Board Members				
	If the interested officer was a school board member and an employee of the school district:				
	a. Was the employment contract not reasonably anticipated to exceed \$8,000 during the fiscal year?				
	b. Was the contract entered into or renewed at a meeting where all board members were present and was the contract approved by a majority?				
§ 471.88, subd. 12	8. Contract for Construction Materials or Services				
	If an interested officer contracted with the government unit to provide construction materials or services, or both:				
	a. Was the contract done by a sealed bid process?				
	b. Does the unit have a population of 1,000 or less according to the last federal census?				
	c. When the question of the contract came before the governing body for consideration, did the officer refrain from voting?				
§ 471.88, subd. 13	9. Contract for Renting Space				
	If a public officer rented space in a public facility, was the rate commensurate with that paid by other members of the public?				
§ 471.88, subd. 15	10. Contract or Franchise Agreement for Utilities				
	If the city has entered into a contract or franchise agreement with a utility for the provision of utility services and the council member is an employee of the utility:				
	a. Did the council member abstain from voting on any official action relating to the contract or franchise agreement?				
	b. Did the council member disclose the reason for the abstention in the official minutes of the council meeting?				

Minn. Stat. Section	CONFLICTS OF INTEREST	Yes	No	Workpaper Reference
§ 382.18	11. County Officials and Employees			
	<p>Did the county official or employee receive reimbursement from a county for providing licensed or tribally approved family foster care?</p> <p style="text-align: center;"><u>or</u></p> <p>Was the county official or employee a coroner, deputy coroner, coroner's investigator, or medical examiner who received compensation for professional services from a professional corporation or medical provider under contract to provide coroner services to a county?</p>			
§ 471.88, subd. 21	12. School Board Member Spouse/Employee Class			
	A local school board may contract with a class of school district employees such as teachers or custodians where the spouse of a school board member is a member of the class of employees contracting with the school board. If this occurred:			
	a. Did the employee spouse receive no special monetary or other benefit that is substantially different from the benefits that other members of the class receive under the employment contract?			
	b. In addition, did the school board:			
	(1) have a majority of disinterested school board members vote to approve the contract,			
	(2) direct the school board member spouse to abstain from voting to approve the contract, and			
	(3) publicly set out the essential facts of the contract at the meeting where the contract is approved?			
§§ 412.311; 365.37, subd. 1; 382.18; & 123B.52, subd. 5	13. Conflicts of Interest: All Other Contracts or Transactions If there were any contracts or transactions between an interested officer and the governing body, were the contracts or transactions included in the exceptions above (B1-12)?			
	Note: If your audit involves a port authority, a public housing authority, a municipal band, a housing and redevelopment authority, an economic development authority, or a community action program or private consultant, review subdivisions 7, 9, 10, 11, or 14 of Minn. Stat. § 471.88 for additional exceptions.			

Minn. Stat. Section	CONFLICTS OF INTEREST		Yes	No	Workpaper Reference
Part II. Purchase of Merchandise from Governmental Agency					
§ 15.054	A. Political subdivisions are prohibited from selling property or materials owned by the political subdivision to its officers or employees. <u>Employees</u> may make purchases from political subdivisions if the following criteria are met.				
	For all purchases:				
	1. Was the property or materials purchased by the public employee not needed for public purposes?				
	2. Was the purchase made through sealed bids or public auction?				
	3. Was the employee <u>not</u> directly involved with the sealed bid or auction process?				
	4. Was the applicable “notice” law followed, and did the same require at least one week of published notice?				
	Minn. Stat. § 15.054 does not apply to property or materials acquired or produced by political subdivisions for sale to the general public in the ordinary course of business.				
Part III. Cities – City Employment of Mayor or City Council Member					
§ 412.02, subd. 1a	<p>[Note: This question only applies to persons elected or appointed to serve as mayor or city council member on or after August 1, 2010.]</p> <p>Was neither the mayor nor any city council member employed by the city in full-time permanent employment as defined by the city’s employment policy?</p>				
Part IV. Audit Conclusion					
<p>The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to conflicts of interest.</p> <p>Conclusion:</p>					