CITY OF MINNEAPOLIS ETHICAL PRACTICES BOARD

ADVISORY OPINION 01

Re: Potential Conflict of Interest for Special Service District Advisory Boards

THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON-PUBLIC DATA UNDER THE MINNESOTA GOVERNMENT DATA PRACTICES ACT.

FACTS

As a manager in the Department of Public Works, you ask the Ethical Practices Board for an advisory opinion based on the following facts:

- 1. The City has established several "special service districts" within the City. The City has also established a portion of Nicollet Avenue as a "pedestrian mall," (hereinafter "Nicollet Mall") which shares relevant characteristics with special service districts for purposes of this opinion. Hereinafter, use of the term "special service district" or "district" in this opinion is intended to include the Nicollet Mall unless otherwise specified.
- 2. Pursuant to City ordinances and state laws authorizing the creation of the special service districts, the City may specially assess properties within these districts for the costs connected with the construction, maintenance, and operation of improvements and the furnishing of special services in the district. The special assessments are authorized based on the principle that the special services primarily benefit the properties located within the district, rather than the City as a whole. Typical examples of special services provided include sidewalk snow removal, decorative lighting, supplemental trash removal, and streetscape maintenance and improvements.
- 3. The Department of Public Works provides or manages the provision of special services in the districts.
- 4. The City has also established advisory boards for each of the special service districts. Pursuant to City ordinances and state laws providing for the establishment of these advisory boards, some or all board members must be property owners, residents, or tenants of property within the district or, with respect to Nicollet Mall, their representatives.
- 5. Board members of special service districts are "local officials" pursuant to §15.280(m)(3) of the City's Ethics Code (Minneapolis Code of Ordinances, Chapter 15).

- 6. Special service district advisory boards advise the Department of Public Works and the City Council on the following: the types of services and improvements to be provided in the district (sometimes services are targeted to sub areas of the district); recommendations on the requests and complaints of owners, occupants, and users of property within the district and members of the public; and the amount and method of assessments to pay the costs of the special services.
- 7. Assessments are applied to properties within the district based on rate formulas, such as: X dollars per lineal frontage along the street; flat rate for all parcels in the district; graduated amounts based on proximity of parcel to center of district.

PERTINENT PROVISION OF THE ETHICS CODE

15.40 Conflicts of interest. (a) Definition of conflicts of interest. A conflict of interest is present when, in the discharge of official duties, a local official or employee participates in a governmental decision, action or transaction in which he or she has a financial interest, except when that financial interest is no greater than that of another member of his or her business classification, profession or occupation. A financial interest is any interest, including loans, which shall yield, directly or indirectly, a monetary or other material benefit to the local official or employee (other than monetary or material benefits authorized by the city). A financial interest of a local official's or employee's employer (other than the City of Minneapolis), his or her associated business, or his or her spouse, domestic partner, or dependent, and their employers or associated businesses shall also be considered a financial interest of the local official or employee. (Remainder of section omitted.)

ISSUE

Do special service district advisory board members have an inherent conflict of interest under the City's Ethics Code in all matters before the advisory board solely by virtue of the fact that they either are, or represent, owners or occupants of property in the district?

OPINION

No. Section 15.40 of the Minneapolis Code of Ordinances (MCO) excludes from its definition of prohibited conflicts of interest a beneficial financial interest that is "no greater than that of another member of [the local official or employee's] business classification, profession or occupation." For purposes of evaluating conflicts of interest in recommendations made by a special service district advisory board, the relevant "business classification" is having an ownership or tenancy interest in property within the district. Limiting the comparison of benefits to those received within the district, and not to those received by properties throughout the City, is appropriate because special service district benefits are, by legislative design, funded solely by assessments of property

owners within the district. Thus, the relevant "business classification" in these circumstances has a geographical determinant. Generally, the recommendations made by the advisory boards appear to provide equivalent benefits for all properties in the district. Where that is the case, a board member has no greater financial interest in the board's recommendation than other property owners or tenants of property in the district.

Potentially some specific matters that come before special service district advisory boards may yield benefits to one board member or his or her associated business that are greater than those to be received by other businesses or properties within the special service district. If there is a circumstance in which an advisory board does consider recommending that a service be provided to individual properties within the district that will not be provided area or district-wide, and if a board member is an owner or occupant or representative of one of those properties, then that particular board member may have a conflict of interest on that particular matter. Special service district advisory boards are also called upon to make recommendations regarding complaints and permit requests of particular property owners or occupants of the district. Recommendations relating to complaints and permits may also present a conflict of interest for a board member when the board member has a financial interest in the subject of the complaint or permit request. Should such situations arise and if there is a question as to the existence of a conflict, the board member may seek further advice from the Ethics Officer or the Ethical Practices Board. Where there is a conflict of interest, the affected board member should both disclose the conflict and abstain from participation in the matter.

Issued:	
	Thomas J. Schumacher, Chair
	Ethical Practices Board