

ETHICS AND CONFLICTS OF INTEREST

INTRODUCTION

The State of Minnesota has an extensive history of statutory regulation of conflicts of interest of public officials. Over the years, the legislature has enacted various statutes governing conduct of public officials in an effort to avoid any appearance of impropriety. These laws have generally received strict interpretation in both advisory opinions of the Minnesota Attorney General's Office and from the courts. Similarly, the City of Minneapolis has, since its inception, regulated conduct of its public officials through the City Charter and through the enactment of ordinances. In 2003, the City enacted a comprehensive Ethics in Government Ordinance ("Ethics Code") that centralized the City's various rules and aspirations regarding the conduct of all its elected officials, officers and employees. Often, but not always, these local laws parallel the generally applicable state laws. The resulting statutory scheme is sometimes confusing, but clear in its intent-- the elimination of abuse of power and the fostering of the public's trust in its elected government. This document is intended to provide an overview of the current laws applicable to Minneapolis public officials and employees in the area of ethical behavior. The reader should keep in mind that evaluation of questions of conflict of interest tends to be factually driven. Consequently, it is difficult to articulate easily-applied, generic criteria for what circumstances constitute an impermissible "conflict of interest." Minneapolis officials should always contact the Ethics Officer in the City Attorney's Office at the earliest opportunity if a conflict, apparent conflict, or other ethical dilemma arises.

SUMMARY

Conflicts of interest. Generally stated, the City's elected officials and employees are prohibited from engaging in businesses, or having other financial or personal interests, that are incompatible with the proper discharge of their official duties, or that would tend to impair their independence of judgment in the performance of those duties. Specific types of conflicts of interests will be discussed in more detail, including conflicts that arise in relation to the following:

- financial interests generally
- interests in contracts with the City
- solicitation or acceptance of gifts or favors
- improper use of city property
- improper use of privileged information
- prohibited outside employment
- prohibited employment after conclusion of City employment
- membership on outside boards or commissions.

Disclosure of economic interests. Elected officials are required by statute to disclose certain economic interests including information about associated businesses, real property holdings, and investment holdings. Supplementary statements of economic interest must be filed on an annual basis.

Disclosure of conflicts of interest. Where a conflict related to financial interest is identified, a public official is required by statute and ordinance to file a written disclosure of the conflict and to refrain from taking any action which could influence the action or decision of the public body on the matter. If the conflict presents itself under circumstances that do not allow for the immediate filing of the disclosure statement, the public official must orally inform the public body of the potential conflict. Similarly, although written disclosure is not required, the public official should also recuse him or herself from participation or decisions relating to "non-financial" types of conflict of interest.

Recusal from action and disqualification by the courts. As stated above, recusal from participation in the decision-making process may be required by statute or ordinance where there is a conflict of interest. In addition to such legal mandates, failure of an official to recuse him or herself from an action or decision may result in the invalidation of the action itself by the courts.

DISCUSSION

I. **General Statement of Conduct That Constitutes a Conflict of Interest; Avoiding Appearance of a Conflict.**

The principle of conflict of interest stems from the fact that public officials are deemed to have a fiduciary duty to the public entity. The potential for a conflict to develop between this public duty and the personal interest of the public official is obvious. The term "conflict of interest" is used broadly to identify those occasions in which the personal interest of a public official, officer or employee may compromise or adversely influence the exercise of official duties or discretion. Examples of conflicts of interests include self-appointment, selling of favors, self-dealing and using confidential official information for private gain. Conflicts of interest have also been found in the holding of other offices or employment that are incompatible.

The City's Ethics Code is enacted in Minneapolis City Ordinances ("MCO"), chapter 15, and the Ethics Code establishes the following general definition of conduct that constitutes a conflict 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.

MCO §15.40(a).

When a conflict is present, the rule governing participation in the conflict situation is:

A local official or employee shall not participate in making or attempt to use his or her position to influence any city governmental decision, action, or transaction in which the local official or employee knows or has reason to know that he or she has a conflict of interest. To participate or participation means making the decision, taking action, entering into a transaction, providing advice or a recommendation, introducing, sponsoring, debating, voting on, approving, and investigating the decision, action, or transaction. Participation includes the direct and active supervision of the participation of a subordinate in the matter. Participation is more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral basis.

MCO §15.40(b)(1).

In analyzing conflict of interest issues, every elected official and public employee should also consider whether the "appearance of a conflict" or "potential conflict" is present. The Ethics Code has several aspirations that all elected officials and employees should adhere to. They are:

We put the public interest ahead of our own personal advancement and financial interests. We disclose conflicts of interest and refrain from participating in decisions where we have a financial interest. We avoid actions that might impair independence of judgment or give the appearance of impropriety or a conflict of interest. We do not use our positions to gain privileges or special treatment and do not use public property or personnel for private or personal purposes.

MCO §15.20, and

We act honestly, fairly, and openly so that others can rely in good faith on our words and actions. We do not engage in or tolerate any act of discrimination, retaliation, harassment or abuse. We maintain and respect confidentiality and decide all matters based on their merits, free from improper influences.

MCO §15.130.

Neither the Minnesota common law nor its statutes disqualify or void actions of public officials and employees based upon aspirational concerns or the "appearance of a conflict." The City Attorney's office has often recommended that the appearance of a conflict of interest should be avoided, even though it may not result in direct or immediate legal consequences. Often times, the public's trust in governmental decisions is affected as much by how circumstances appear, even if the particular matter does not involve technical ethical violations.

II. Specific Types of Conflicts of Interest Prohibited by Statute or the City's Ethics Code.

The following is a summary of the types of conflicts of interest that have been specifically prohibited by statute or the Ethics Code.

A. Financial interests generally

As discussed above, it is a conflict of interest for a public official, in the discharge of official duties, to take an administrative or legislative action or make a decision that would affect his or her financial interests, or those of an associated business or relative, unless the effect on the official is no greater than on other members of his or her business classification, profession or occupation.

In addition to state and local law, various federal regulations prohibit local public officials from having any private interest in any matter that they have authority to approve as a public official and that involves the expenditure of federal funds. For example, specific conflict of interest provisions pertaining to The Department of Housing and Urban Development can be found in 24 Code of Federal Regulations, chapter 5, §570.611. All persons who exercise responsibilities or who can participate in decision-making or gain insider information, are prohibited from obtaining "a personal or financial interest for CDBG [or UDAG] assisted activity," nor shall they "have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereof for themselves, or those with whom they have family or business ties...." This prohibition applies during the tenure of such persons and for one year thereafter. These regulations provide for exceptions together with criteria for considering exceptions that should be considered on a case-by-case basis.

B. Contracts.

An interest in a public contract is a particular type of financial interest that poses a very serious conflict of interest for an official and is specifically addressed by statute, charter and the Ethics Code. Minnesota Statute ("Minn. Stat.") §471.87 states that, "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 financially therefrom." Violation of that statutory provision is a gross misdemeanor crime.

The Ethics Code, while not discussing contracts specifically, has broad prohibitions on direct or indirect financial interests in any City matter, as discussed above, including contracts. See MCO §15.40. The prohibition clearly includes individual financial interests in City contracts. The City's Ethical Practices Board, discussed below, has broad powers to recommend the appropriate remedies to conflicts of interests.

Minneapolis City Charter, chapter 3, §22, prohibits Council Members or other officers and employees from being "a party to or [having] an interest in any job or contract with the City....," This provision does not require a personal financial interest as state statutes do. Violation of this section renders void any contract entered into in violation of the statutory restriction. If money has been paid on such a contract, recovery of the money can be obtained against the Council Member or employee.

The statutes do provide for some limited, well-defined exceptions which recognize that, particularly in smaller cities and towns, elected officials often are members of the local business community and it may not be feasible for them to completely disengage from their personal interests. These exceptions are listed in Minn. Stat. §471.88. Exceptions of particular relevance to Minneapolis officials are those which allow commissioners to participate in loan and grant programs administered by the local development authority. See Minn. Stat. §469.009, subd. 5, and Minn. Stat. §471.88,

subd. 14; See also MCO §419.80(conflict of interest and participation in NRP programs). However, officials who are interested in participating in such programs must be careful to abide by the statutory and ordinance limitations and disclose their participation in the program.

C. Soliciting or Accepting Gifts and favors.

Both state statutes and the City's Ethics Code contain prohibitions relating to the solicitation and receipt of gifts. Minn. Stat. §10A.071 prohibits local officials from accepting a gift from a lobbyist or from certain organizations that advocate before the legislature. All lobbyists must register with the State. To determine if a party offering a gift to you is registered as a lobbyist you may call our office or look up the list of registered lobbyists at www.cfboard.state.mn.us/lobby/.

Local officials are also prohibited by Minn. Stat. §471.895 from accepting gifts from an "interested person," who is defined in that statute as "a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make." The City's Ethics Code is structured more broadly and considers any gift – not simply those received from lobbyists or the statutorily defined "interested person" - that would create a financial or personal interest that would be incompatible with, or that would tend to impair independence of judgment or action in, the proper discharge of official duty to be a conflict of interest. See MCO §15.50. However, both Minn. Stat. §471.895 and MCO §15.50 list the following exceptions as not falling within the gift prohibition:

- a campaign contribution as defined in state statute;
- a service to assist an official in the performance of official duties, including, but not limited to, providing advice, consultation, information, and communication in connection with legislation, and services to constituents;
- a service of insignificant monetary value;
- a plaque or similar memento with a resale value of five dollars (\$5.00) or less;
- a trinket or memento costing five dollars (\$5.00) or less;
- informational material of unexceptional value;
- food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program;
- a gift given because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group;
- a gift given by a lobbyist, principal, or interested person (as those terms are defined in statute) who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

There are other exceptions to the gift ban. However, even in situations where the acceptance of a gift would not constitute a violation of state statutes or the Ethics Code, all elected officials and City employees should consider the appearance of the situation to the public's trust.

D. Improper use of privileged information.

The Ethics Code prohibits the improper use of privileged information as follows:

(a) A local official or employee shall not use or disclose any information gained in the course of or by reason of his or her official position in any way that violates his or her fiduciary duty to the city or the Minnesota Government Data Practices Act.

(b) A local official or employee shall not use or disclose privileged, nonpublic, confidential, private, or proprietary information gained in the course of his or her official duties in any way that could result in financial gain for the local official or employee, or for the spouse, domestic partner, or dependent of the local official or employee, or for a person in a committed relationship with the local official or employee, or for any associated business of the local official or employee, or his or her spouse, domestic partner, dependent, or person with whom he or she has a committed relationship.

MCO §15.170.

Local officials should not use or disclose privileged information gained in the course of, or by reason of, their official position or activities in any way that could result in financial or personal gain for the local official, members of their family, or any associated business, or which may otherwise impair the officer's fiduciary duty to the city. MCO §15.170. Privileged information includes, but is not limited to, any data classified by statute as private, confidential, nonpublic or protected nonpublic. *Id.* Further, no former local official shall disclose or use any confidential, privileged or proprietary information gained by reason of their city employment unless the information is a matter of public knowledge or is available to the public on request.

E. Prohibited employment: during and after holding office.

The City's Ethics Ordinance contains several provisions that relate to officials' employment outside of their official position, both during and after their term in office. While holding an official public position, it is a conflict of interest to hold another position that interferes, or may interfere, with the proper discharge of public duty. MCO §15.60 As a specific example of such incompatible employment, a local official may not represent a client for a fee before the council or any council committee, or any board, commission or department of the city.

Concerns related to incompatible employment continue after the official leaves public office. Several ordinance and statutory provisions place restrictions on the ability of former City officials for a period of one year after leaving that official position, to represent persons or parties on matters in which they were officially involved, with the exception that such former officials may assist governmental agencies in certain circumstances. See MCO §15.90; MCO §422.50; and Minn. Stat. §469.009, subd. 4.

Finally, §15.60 of the Ethics Code prohibits participation as a competitor in a competitive selection process for a City contract when the former public official or employee was involved in recommending or approving the project or work to be done, or in recommending or approving the process to be used.

F. Participation on outside boards or commissions.

The participation of council members and other City officials on outside boards, commissions or task forces ("boards"), where such participation is not part of the "official duties" of the City official, could easily raise conflict of interests problems. Such conflicts of interests may arise from participation on the boards of non-profit and "public interest" organizations, as well as on boards of directors for business organizations, and may arise even though the City official's participation on the board is a volunteer activity. Where specific situations have been presented to the City Attorney's Office for review, we have typically advised that a conflict or potential conflict of interest existed. The City's Ethics Officer should be consulted in each situation.

There is no law that specifically prohibits participation on such boards, but several of the types of conflicts of interest discussed above could be implicated. The City Charter, Chapter 3, §22 prohibits City officials and employees from being a party to or interested in any job or contract with the City. A board member is generally a "party to or interested in" the activities and contracts of the organization. If the board on which an elected official serves seeks a contract, grant, or other award of money or services from the City, the elected official would have an interest in conflict with the Charter prohibition.

Conflicts of interest also are likely where the organization for which a city official serves on the board advocates on matters in which the City also is or may be an interested party. For example, the organization may lobby for City legislation or other City action favorable to the organization's mission. Similarly, the organization may lobby the State legislature on matters that are also of interest to the City. Board membership in these circumstances may be incompatible with the proper discharge of official duties in the public interest or may tend to impair independence of judgment or action in the performance of official duties.

III. Disclosure of Conflicts or Potential Conflicts of Interest.

Both Minnesota statutes and the Ethics Code require public disclosure of an official's economic interests, such as property holdings and business associations, and also require disclosure of financial conflicts of interest related to actions or decisions to be made by the official in the course of official duties.

A. Filing and disclosure of economic interests.

Minn. Stat. §10A.09 requires elected officials of the City to file statements of economic interest with the City Clerk. This filing serves as public notice of potential economic interests and should also serve as a reminder to elected officials of the potential for the development of conflicts. Elected officials must file supplementary statements of economic interest by April 15 of each year. These filing requirements are reiterated in §15.40(c) of the City's Ethics Code. Failure to comply with the

filing requirement subjects elected officials to personal financial penalties, including suspension without pay, and criminal misdemeanor penalties.

B. Procedure for disclosure of potential conflicts of financial interests; penalty for failure to disclose.

The requirement to publicly disclose how a proposed action or decision to be taken in the course of official duties may raise a potential conflict with the official's financial interests is found in MCO §15.40 and in Minn. Stat. §10A.07. The Ethics Code and Minn. Stat. §10A.07 are viewed as directory, which simply means that no consequences for failure to comply are stated in those provisions. However, the Ethical Practices Board could recommend that sanctions be imposed against an offending elected official, and could recommend that the disclosure process be enhanced to include penalty provisions.

1. Generally-applicable disclosure requirements.

The disclosure provisions of City ordinances §15.40 are modeled after those found in Minn. Stat. §10A.07. Disclosure must be made where an action or decision "would substantially affect [the official's] financial interests or those of an associated business...." However, if the effect of the action or decision is no greater than it would be on other members of the person's business classification, profession or occupation, disclosure need not be made. Disclosure need not be made if it is determined that the effect of the action or decision is insubstantial on the financial interests of the official or employee. If disclosure is required, it must be done in the following manner:

1. A written statement must be prepared describing the proposed action or decision and the potential conflict.
2. Copies of the statement must be delivered to the city clerk or immediate superior, if any (delivery of the copy goes to the city clerk and president of the city council if the person is an elected public official or an officer or employee appointed by the mayor or council).
3. If there is insufficient time and a potential conflict presents itself, a public official is required to verbally make disclosure, and within a week from the time the conflict presents itself, file a written statement.
4. As a remedial measure, the superior of the public official shall reassign the matter, or the public official shall abstain from participating in the matter.
5. If the official is not able to abstain from action in connection with the matter, he or she must file a statement describing the potential conflict of interest and the action taken with one week of the date of the action.

C. Disclosure of "non-financial" conflicts of interest.

The disclosure provisions discussed above apply only to financially-related conflicts of interest but, as discussed in the previous sections, conflicts of interest may also be "personal" in nature. Council members should also abstain or "recuse" themselves from participating in decisions that could conflict with their personal interests. Recusal is discussed further in the following section. Public disclosure of such non-financial personal conflicts of interest is generally not required by statute or ordinance,

although, in some circumstances, council members may wish to disclose the reason for recusal or abstention from the decision-making process.

Even in the absence of a financial interest, the Ethics Code requires public disclosure of an affiliation with an organization or entity when the council member, or his or her spouse, domestic partner, or dependent is an officer, director, board member, or trustee when business of the organization or entity is before the council member. Similarly, public disclosure is required, even in the absence of a financial interest, when a city governmental decision involves a related person.

IV. Recusal or "disqualification" from the decision-making process.

As discussed above, an official should abstain or recuse him or herself from participation in the decision-making process for a matter for which the official has a potential conflict of interest. If this is not done, and the action is later challenged in court, the court may "disqualify" the public official from participating in the decision and may void the action taken by the body. See, for example, Singewald v. Minneapolis Gas Co., 142 N.W. 739 (Minn. 1966); Lenz v. Coon Creek Watershed District, 153 N.W.2d 209 (Minn. 1957); Stone v. Bevans, 92 N.W. 520 (Minn. 1902). Courts have disqualified officials or voided the action taken regardless of the official's good faith, the absence of profit to the official, or the fairness or reasonableness of the agreement involved. Singewald, supra; Stone, supra. The courts' evaluations of the questions of conflict of interest in the cases cited above were based upon the unique facts presented. Should a conflict, apparent conflict, or other ethical dilemma arise, Minneapolis officials should contact the Ethics Officer at their earliest opportunity.

Lenz v. Coon Creek Watershed District, supra the Minnesota Supreme Court stated that the purpose behind the rule of disqualification of public officials or avoidance of their actions "... is to insure that their decision will not be an arbitrary reflection of their own selfish interests." The Court identified relevant factors to be considered in evaluating whether disqualification or avoidance is appropriate. These include:

- (1) The nature of the decision being made.
- (2) The nature of the pecuniary interest.
- (3) The number of officials making the decision who are interested.
- (4) The need to have interested persons make the decision.
- (5) Other means available to insure that officials will not act arbitrarily to further their personal interests.

As stated earlier in this document, neither the Minnesota common law, its statutes, nor Minneapolis ordinances disqualify or void actions of public officials and employees based upon the mere "appearance of a conflict." Nevertheless, the City Attorney's Office has often recommended that the appearance of a conflict of interest should be avoided, even though it may not result in legal consequences. This approach is appropriate, first, because one cannot be certain how a court will decide the issue of whether or not an actual, as opposed to perceived, conflict exists. In addition, the more "transparent" approach to potential conflicts of interest should enhance public confidence in the integrity of governmental decisions.

V. Other Ethics Code Considerations

A. Fiduciary Duty

The Ethics Code requires that in the performance of their official duties, local officials and employees shall act for the benefit of the city. MCO §15.30. Simply stated, in the performance of any City business, all local officials and employees are required to act in the City's interest first and foremost.

B. Use of Official Position to Solicit Privileges or Special Treatment

The Ethics Code also prohibits elected officials, officers and employees from using their positions and City employees and servants from soliciting special treatment in any form. The prohibition applies to any situation from a seat at a "special" table in a restaurant up to the use of official power to avoid criminal prosecution, and everything in between. As long as the different or special treatment is based on a City employee, official or elected officer's official position or power, such special treatment may violate the Ethics Code.

C. Unauthorized Use or Destruction of City Property

The Ethics Code prohibits the unauthorized use or destruction of City property. The Ethical Practices Board, discussed below, defines the "unauthorized use" of City property as including, but not limited to, any use of City property that would otherwise violate the public purpose doctrine, a local ordinance, policy or state statute regarding the use of such public property.

D. Nepotism

The Ethics Code prohibits any influence or decisions in an employee's hiring, firing, advancement, discipline, supervision, transfer, etc. of the employee's relatives by any related City employee or official. Similarly, a City employee or official may not directly supervise a relative or the supervisor of a relative. The Ethics Officer of the Human Resources Department should be contacted regarding any situations that may arise.

VI. The Ethical Practices Board

With the adoption of the City's Ethics Code in 2003, the City established the Ethical Practices Board ("Board"). The Board is composed of three Minneapolis residents that are appointed by an independent selection committee consisting of the Deans of the University of Minnesota and St. Thomas Law Schools and the Chief Judge of Hennepin County. None of the Board members may be a local official or city employee or be related to any local official or City employee. The current Board members are Patricia Kovel-Jarboe, Chair, Susan Humiston and Abigail Garner. All three have extensive civic experience and are enthusiastic supporters of the City's efforts to focus on ethics in government.

Among other things, the three-member Board has the power to investigate allegations of improper conduct by City officials and recommend discipline for violations of the Ethics Code. The Board will

also monitor and report on ethics activities in City government, recommend changes to the Ethics Code, and give opinions on interpretation of the Code.

CONCLUSION

Issues as to the existence of actual or potential conflicts between public duties and private interests are inevitable. Statutes, local laws and federal regulations have all, in their own way, attempted to address the manner in which public officials and public employees should respond to conflict situations, and address other ethical considerations. Not all of these laws have the same requirements or address conflicts in the same manner. Analysis of conflicts issues arising under these laws is fact intensive. The City Attorney, Deputy City Attorney and City Ethics Officer are available to assist in analyzing the presence of any conflict of interest or ethics issues.

H. Special concerns—gift law, conflicts of interest, and incompatible offices

There are several areas that are special concerns for all elected officials and some appointed officers. These include the following:

Gift law. City officials are generally prohibited from accepting gifts, although there are a few limited exceptions.

Conflicts of interest. City councils are generally prohibited from entering into a contract if one of their councilmembers has an interest in the contract. There are some exceptions to this rule.

Incompatible offices. City officials may not hold two offices that are incompatible.

In all three of these areas, the law is complex and whether a violation has occurred is not always clear. And even when a situation does not violate the law, people sometimes still question whether a public official has acted ethically. This section discusses each of the laws in more detail.

1. The law prohibiting gifts to city officials

Minn. Stat. § 471.895.

With some exceptions, every gift to any city official is prohibited. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Minn. Stat. § 471.895, subd. 1(c).

An “interested person” is a person or a representative of a person or association with a direct financial interest in a decision the local official is authorized to make.

Minn. Stat. § 10A.071, subd. 1; Minn. Stat. § 471.895, subd. 1(b).

A “gift” means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

Minn. Stat. § 471.895, subd. 1(d).

A “local official” means an elected or appointed official of a city, or of an agency, authority or instrumentality of a city.

All members of the city council, appointed boards, commissions, and committees are covered by this law. The definition of an interested person implies that local officials who are authorized to make decisions or recommendations that could impact someone financially are also covered by the law. As a result, top appointed employees are likely covered, such as the manager, administrator, clerk, financial officer, and other department heads. Other covered city employees could include inspectors and people who can make decisions or recommendations about purchasing property, supplies or services. Indeed, it is possible to construct fact situations where almost any public employee can make or recommend actions that could affect someone’s direct financial interest. As a result, many cities interpret the gift law to apply to all city employees.

An interested person under the gift law likely includes anyone who may provide goods or services to a city, such as engineers, attorneys, fiscal advisors, contractors, and sales representatives.

In addition, virtually every resident of the city and anyone doing business in the city could at some time have a direct financial interest in a decision a city official is authorized to make and thus could qualify as an interested person. The following are possible examples where a property or business owner's financial interest could be affected:

- The levying of property taxes.
- The spreading of special assessments.
- The valuation of property for tax purposes.
- The issuing of a license.
- The zoning of property or granting of a land-use permit.

As a result, any person doing business or residing in the city is potentially an interested person as far as a city councilmember is concerned. Whether a resident or business owner is an interested person, as far as members of boards and commissions are concerned, depends on the types of decisions or recommendations the boards or commissions are authorized to make.

It is important to note that the decision or recommendation a city official is authorized to make does not have to be pending or probable. If an individual could at any time have a direct financial interest in a decision or recommendation that a city official would be authorized to make, that individual would likely be considered an interested person.

Minn. Stat. § 471.895, subd. 3;
See opinions issued by the MN
Campaign Finance and Public
Disclosure Board relating to
some of these exceptions.

There are a few limited exceptions to the gift law. For example, the following types of gifts are not prohibited:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque with a resale value of \$5 or less.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception probably permits only the principal speakers at meetings to receive gifts of food or beverage.)

- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts given by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.
- Gifts given by a national or multi-state organization of governmental organizations or officials, if a majority of the dues to the organization are paid from public funds, to attendees at a conference sponsored by that organization if the gift is food or beverage given at a reception or meal and an equivalent gift is given or offered to all other attendees.

The law prohibits gifts to city officials, not to cities. Thus, an interested person can give a gift to a city. If the giver has no control over who will receive the gift and the gift was not targeted to a specific person, perhaps a city official could benefit from that gift. If the person who benefits from the gift has any control over its use, the gift would likely be prohibited. For example, if an interested person gave a city five tickets to a football game, the councilmembers probably could not decide to use the tickets for themselves.

2. Conflicts of interest

There are two types of conflicts of interest that a councilmember may encounter: those involving contractual decisions, and those involving non-contractual decisions.

Minn. Stat. § 471.87; Minn. Stat. § 412.311.

Official Conflict of Interest,
LMC Information Memo, May
2004.

First, a councilmember of a statutory city may not have a direct or indirect personal, financial interest in any sale, lease or contract they are authorized to make in their official capacity. There are limited exceptions to this law. Unless there is an exception, any contract made in violation of this law is void.

City councilmembers, who knowingly authorize a prohibited contract, even though they do not benefit from it, may be guilty of a crime. The councilmember who would benefit from the contract could also be guilty of a crime if that person entered into it knowing it was prohibited. The contract is void even if the benefiting councilmember did not participate in the discussion of the contract or vote on the contract.

Second, there are also situations where councilmembers may find that they have an interest in a non-contractual decision the council will make. This type of interest does not have to be of a financial nature. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember most likely should abstain from participating in the council discussion and from voting on these issues.