

City Council Joint Committee

Minn. Stat. § 13D.021 – Meeting by Telephone or Other Electronic Means; Conditions - Minn. Stat. § 13D.021 provides that a meeting of a public body may be conducted via telephone or other electronic means if meeting in a public location is not practical or prudent because of a health pandemic or declared emergency.

THE FARIBAULT JOINT COMMITTEE HAS RESUMED MEETING IN PERSON. ATTENDEES WILL BE REQUIRED TO PRACTICE SOCIAL DISTANCING AND WEAR FACE COVERINGS (MASKS) WHILE AT CITY HALL IN ACCORDANCE WITH THE REQUIREMENTS OF EMERGENCY EXECUTIVE ORDER 20-81 ISSUED BY GOVERNOR WALZ ON JULY 22, 2020.

A ZOOM MEETING WILL ALSO BE AVAILABLE: CALL IN NUMBER: 1 312 626 6799; MEETING ID: 840 5479 5942

1. Call To Order

Documents:

[1. 2020-10-27 JOINT AGENDA.PDF](#)

2. 1. Discussion On Conflicts Of Interest

Documents:

[2. DISCUSSION ON CONFLICTS OF INTEREST.PDF](#)

3. Future Discussion

4. Adjourn

Please contact the City Administrator's Office if you need special accommodations while attending this meeting



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**City Council Joint Committee
Tuesday, October 27, 2020 at 6:30pm or
immediately following the City Council Meeting
City Hall – Council Chambers**

AGENDA

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CALL IN NUMBER: 1 312 626 6799; MEETING ID: 840 5479 5942

1. Call to Order
2. Discussion on Conflicts of Interest
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4. Adjourn
(The Council may meet as a group for dinner)

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Council Committee Memorandum

TO: Joint Council Committee
FROM: Tim Murray, City Administrator
MEETING DATE: October 27, 2020
SUBJECT: Discussion on Conflicts of Interest

Discussion:

The City's Charter Commission, which met on Thursday, September 24, 2020, had recommended a revision to Section 2.04. of the Charter, which addresses conflicts of interest. Determining when conflicts of interest exist for councilmembers can, at times, be somewhat subjective or unclear. The current language in Section 2.04. addresses conflicts of interest regarding councilmembers having any interest in a "contract". Following is the language from that section that covers that:

Except as authorized in Minnesota law, a member of the council who is authorized to take part in any manner in making any sale, lease, or contract in the member's capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.

What the Charter does not specifically address, however, are "non-contract" situations, what represents a conflict of interest in those situations, and what a councilmember may or may not (should or should not) do under such circumstances. The Commission recommended the addition of the following language to Sec. 2.04 of the Charter, which was provided by the City Attorney:

Except as authorized in Minnesota law, a member of the council who is authorized to take part in any manner in any non-contract situation in the member's capacity shall not voluntarily have a personal interest in that non-contract situation or personally benefit therefrom.

The proposed revision was discussed at the October 6, 2020 Joint Committee meeting. There was some uncertainty on what circumstances might be considered a conflict of interest under this language, and the Council requested that the City Attorney attend a future work session to provide a more in-depth review of this proposed change and further explain what represents conflicts of interest.

Attachment:

- Excerpts from LMC Information Memo – Official Conflict of Interest



Official Conflict of Interest

Learn responsibilities of city officials to avoid prohibited personal or financial benefits in contracts, which public offices may not be held simultaneously by the same person, need to disclose economic interests, and limits on gifts.

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).

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

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).

Nevada Commission on Ethics v. Carrigan, 131 S. Ct. 2343 (2011).

63C Am. Jur. 2d Public Officers § 246.

However, for contracts deemed illegal, a city may not have authority to follow through on the performance of that illegal contract. If a contract is invalid and does not fall under the cited exceptions, it does not matter that the interested councilmember did not vote or participate in the discussion. Likewise, it does not matter that the interested councilmember's vote was not needed for the council's approval of the contract. Even if the councilmember acted in good faith and the contract appears fair and reasonable, the contract generally is void if it violates a conflict of interest.

When the city enters into a prohibited contract with an interested councilmember, the councilmember may not recover on the contract nor recover the value on the basis of an implied contract. If a councilmember already has 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.

If a councilmember has unlawfully sold goods to the city and the goods can be returned, a court probably will order the goods returned and prohibit any payment for them. For example, when the city purchased a lot from a councilmember, but a building has yet to be built on it, or if supplies, such as lumber, have been bought and not yet used. However, if the goods cannot be returned, the city did not exceed its powers to contract for those goods and no fraud or collusion in the transaction had occurred, the court will determine the reasonable value of the property and permit payment on the basis of the value received.

In case of doubt, the city may want to just assume it cannot contract with one of its officers. If the contract is necessary, a legal opinion or court ruling should be secured before proceeding.

B. Non-contractual situations

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. Any city official who has a personal financial interest in an official non-contractual action generally cannot participate in the action.

RELEVANT LINKS:

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

This especially holds true when the matter concerns the member's character, conduct, or right to hold office. Conflicts can also arise when the official's own personal interest is so distinct from the public interest that the member cannot fairly represent the public interest.

In general, when an act of a council represents quasi-judicial decision, 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. The bias of one councilmember could make a city council's decision arbitrary.

When a disqualifying personal interest exists, however, the action is not necessarily void. In contrast to the rules regarding conflict of interest in contract situations, the official action may remain valid if the required number of non-interested council members approved the action.

1. Disqualifying interest—factors

The Minnesota Supreme Court has utilized several factors when determining whether 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.
- Other means available, such as the opportunity for review.

Courts consider these factors in light of the conflict in issue.

When an administrative body has a duty to act on a matter and is the only entity capable of acting, the fact that members may have had a personal interest in the result may not disqualify them from performing their duties.

For example, courts consider whether other checks and balances exist to ensure city officials will not act arbitrarily or in furtherance of self-interests. 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. In another case, the court said that the ability to appeal to the district court would adequately protect owners from any possible prejudice.

2. Common concerns

a. Self-judgment

On the theory that no person should serve as the judge of his or her own case, courts have generally held that an officer may not participate in proceedings where he or she is the subject.

RELEVANT LINKS:

[Minn. Stat. § 471.46.](#)
[Minn. Stat. § 415.15.](#)
A.G. Op. 471M (Oct. 30, 1986).

[Minn. Stat. § 415.15.](#)

See Section V, *Compatibility of offices*, below

[Minn. Stat. § 415.11.](#)

A.G. Op. 471-K (May 10, 1976).

[Minn. Stat. § 412.191, subd. 1.](#)

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

A.G. Op. (Dec. 9, 1976) (informal letter opinion).

On the theory that no person should serve as the judge of his or her own case, courts have generally held that an officer may not participate in proceedings where he or she is the subject. As a result, councilmembers probably should not participate in a decision involving their own possible offense. For example, determination of a councilmember's residency may represent one such issue from which an interested officer should abstain.

b. Self-appointment

Generally, city officials may not appoint a councilmember to fill a vacancy in a different elected position, even if the councilmember resigns from his or her existing position before the new appointment is made. However, councilmembers may be appointed mayor or clerk, but may not vote on their appointment. For example, this prohibits the mayor and a councilmember "switching" positions because they want to do so.

Resigning city councilmembers shall not participate in a vote to choose a person to replace the resigning member.

For appointments to non-elective positions, the general rule is that an official has a conflict in terms of self-interest. This conflict disqualifies the official from participating in the decision to appoint him- or herself. Appointing one council member to serve in two positions simultaneously triggers analysis of compatibility of the two offices or positions.

c. Council compensation

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, increases in salary cannot begin until after the next regular city election. Since every councilmember has a personal interest in his or her compensation, the need for interested officials to make the decision is unavoidable in this situation.

A special situation exists for 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. While the other councilmembers may vote on the clerk's compensation without any disqualifying self-interests, it is probably best for the clerk not to vote on his or her own salary.

d. Family connections

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. The attorney general has further stated that a prohibited interest does not necessarily arise when the spouse of a city employee is elected mayor.

RELEVANT LINKS:

Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. Ct. App. 2000).

Minn. Stat. § 363A.08, subd. 2.

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

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

The opinion carefully avoids any statement about future action of the council on the existing employment relationship. Further, the court has stated that no conflict existed from a councilmember's brother's law firm representing the applicant for a preliminary plat.

The Minnesota Human Rights Act prohibits discrimination in employment based upon marital status. Making inquiries into the marital status of employees or applicants for city positions is not recommended.

e. Business connections

Business interests can also create conflicts—even if no personal financial interest arises under the general law.

In one situation, the attorney general advised that a housing authority commissioner had a conflict when—as a foreman—he would aid his employer, a contractor, in making a bid to the housing authority.

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, but the official must abstain from participating in any related actions.

f. Land use

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

(1) Property ownership

Whether or not property ownership disqualifies a councilmember from participating in a land use decision will depend (to some extent) on the nature of the decision and the numbers of persons or properties affected.

At one extreme is adoption of a new zoning ordinance (or a comprehensive revision of an existing ordinance) that may impact all property in the city. In this situation, the councilmember's interest is not personal and he or she should be able to participate. If this was not allowed, such ordinances might never be adopted.

At the other extreme is the application for a zoning variance or special use permit that only applies to a councilmember's property. Such a specific, personal interest would likely disqualify the member from participating in the proceedings. However, the councilmember should still be able to submit the required application to the city.

RELEVANT LINKS:

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

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

LMC information memo, *Acquisition and Maintenance of City Streets*.

A.G. Op. 396g-16 (Oct. 15, 1957).
Petition of Jacobson, 234 Minn. 296, 48 N.W.2d 441 (1951).
LMC information memo, *Vacation of City Streets*.

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

The person's membership in the church, without evidence of a closer connection, did not sufficiently create a direct interest in the outcome to justify setting aside the board's zoning action.

g. Streets

(1) Acquisition

As previously noted, 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, however, had the highway gone through the commissioner's land.

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 the decision to establish a town road is, by its very nature, of interest to all local citizens, including board members who may be in the best position to know 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.

(2) Vacation

Arguably, a street vacation does not differ significantly from the establishment of a street, which, as stated, the court has found abutting owners not to have a disqualifying interest. However, the attorney general may disagree since it advised that a councilmember who had an interest in property abutting a street proposed for vacation could not participate in the vacation proceedings.

h. Licenses and permits

When a councilmember applies for a license or a permit that requires council approval, the member's personal (often financial) interest should prevent his or her participation in the decision-making process.

In some situations, a councilmember may have a possible conflict of interest even when he or she is not the licensee. The attorney general said that a councilmember who was a part-time employee of a licensee could not vote on reducing the liquor license fee if it could be shown that the councilmember had a personal interest. 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.

RELEVANT LINKS:

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

Minn. R. 7515.0430, subd. 5.

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

1989 Street Improvement Program v. Denmark Twp., 483 N.W.2d 508 (Minn. Ct. App. 1992).

However, whether an individual's personal interest is sufficient to disqualify him or her from voting on the decision represents a question involving specific facts that must be determined on a case-by-case basis.

In a similar case, the Minnesota Supreme Court held that a town board member who owned property across from a bar could not vote 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."

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.

3. Consequences

Courts may uphold actions taken where a councilmember with a disqualifying interest participated if the result would have been the same without the interested official's vote. For example, the Minnesota Supreme Court considered 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, that commission member's participation in a unanimous decision did not invalidate the commission's decision.

Councilmembers who have a disqualifying interest in a matter generally are 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.

C. Recommendation

City officials concerned about conflicts of interest in contractual or non-contractual situations should:

- Consult the city attorney.
- Disclose the interest as early as possible (orally and in writing).
- Not attempt to influence others.
- Not participate in any discussions (when possible, leave the room when the governing body is discussing the matter).
- Follow the statutory procedures provided for the contracting exceptions.