



INFORMATION MEMO

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. Links to model resolutions for contracting with an interested council member.

RELEVANT LINKS:

I. Ethical responsibilities of local office in Minnesota

Most Minnesotans can run for and hold elected office at the federal, state, or local level. Candidates need not pass a civics test, attend mandatory trainings, obtain a specific degree or certification, or otherwise demonstrate their fitness. Nevertheless, election or appointment to public office may impact one's personal and professional life—perhaps quite significantly.

Some of the most important regulations impacting local governments address the ethical responsibilities of public office—laws that can apply to both elected and appointed city officials. Such safeguards exist to:

- Ensure integrity in government.
- Protect the city's and/or the city residents' interests.
- Limit the opportunity for officials to benefit (personally or financially) from public office.

Unfortunately, such regulations also are some of the most misunderstood. City officials—particularly those new to their positions—need to be aware of their responsibilities and the types of prohibited conduct. Various regulations:

- Limit an official's ability to act independently.
- Provide the public access to the decision-making process.
- Prohibit public officials from accepting gifts.
- Prohibit conflicts of interest.
- Prohibit officials from holding incompatible offices.
- Require public officials to disclose conflicts or economic interests when they do arise.

This memo examines the ethical responsibilities of local office in Minnesota.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Const. art. XII, § 3.](#)

[Minn. Stat. § 414.01, subd. 1a\(2\).](#)

Handbook, *The Statutory City*.
Handbook, *The Home Rule Charter City*.

[Minn. Stat. ch. 412.](#)

[Minn. Stat. ch. 410.](#)

While this memo focuses on the general principles behind these various regulations and prohibitions, remember ethical questions often are difficult to answer. Not all situations fit neatly into current guidelines, so conduct that is not clearly prohibited still may seem inappropriate. This appearance of impropriety can damage a councilmember's image (as well as the city's reputation), making it worthy of consideration.

II. City government in Minnesota

The Minnesota Constitution authorizes the Minnesota Legislature to provide for the "creation, organization, administration, consolidation, division, and dissolution of local government units and their functions, for the change of boundaries thereof, [and] for their elective and appointive officers." The form and function of city government, and the powers, duties and limitations of elected and appointed office, help shape our basic ethical responsibilities.

A. Form and function

Minnesota law considers cities public corporations. The Legislature has described cities as the type of government that "most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial and governmental purposes." About 82 percent of the people in Minnesota live in cities, even though cities only cover about 4.9 percent of the state's land area. Since most Minnesotans live in cities, the basic goal of city government is to provide services. In many parts of the state, cities serve as the main governmental entities.

Minnesota has two basic types of cities: statutory cities and home rule charter cities. The enabling legislation under which each is incorporated represents the major difference between the two:

- Statutory cities derive many of their powers from Chapter 412 of the Minnesota statutes.
- Home rule charter cities obtain their powers from a home rule charter.

Statutory and home rule charter cities differ in terms of organization and powers, not because of any classification of population, area, geographical location, or other physical features.

B. City council

The elected city council serves as the cornerstone of city government in Minnesota. The council fashions the policies that determine a community's present and future well-being. Because people look to their local government for leadership, much of the responsibility for community development falls on the shoulders of city councilmembers.

RELEVANT LINKS:

Handbook, *Elected Officials and Council Structure and Role*.

Minn. Stat. § 412.191, subd. 2.

Minn. Stat. § 412.191, subd. 4.

Minn. Stat. § 412.111.

Minn. Stat. § 412.201.

Minn. Stat. § 412.241.

Minn. Stat. § 412.111.

Minn. Stat. § 412.221, subd. 32.

Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (1944).

Minn. Stat. § 10A.071, subd. 1(b).

Minn. Stat. § 471.895 subd 2.

Minn. Stat. § 471.895, subd. 1(d).

The major areas of council authority and responsibility include:

- Judging the qualifications and election of its own members.
- Setting and interpreting rules of procedure.
- Legislating for the city.
- Enforcing city ordinances.
- Appointing and dismissing administrative personnel.
- Transacting city business.
- Managing city finances.
- Making appointments to boards, commissions, and committees.
- Protecting the welfare of the city and its inhabitants.
- Providing community leadership.

The city council is a continuing body. New members have no effect on the body except to change its membership. This means that all ordinances and resolutions remain in effect until the council alters or rescinds them, or until they expire through their own terms. At any time, the council can change any resolution, ordinance, or administrative order, whether or not the individuals presently on the council are the same members as when the council originally took action.

Councilmembers fulfill their statutory duties, almost without exception, by acting as a council as a whole. For example, the council, not individual councilmembers, supervise administrative officers, formulate policies, and exercise city powers.

III. Gifts

State law defines a “gift” as money, property (real or personal), a service, a loan, the forbearance or forgiveness of debt, or a promise of future employment, given and received without the giver receiving something of equal or greater value in return.

A. General prohibition

Elected and appointed “local officials” generally may not receive a gift from any “interested persons.”

1. Local officials

A “local official” represents any elected or appointed official of a city, or of an agency, authority, or instrumentality of a city. The gift prohibition clearly applies to the members of the city council. However, the law does not further define the term “local official”, making it unclear if the law intends to cover all city employees, or just certain high-level employees (such as city managers or administrators) and other appointed officials.

RELEVANT LINKS:

[Minn. Stat. § 471.895, subd. 1\(c\).](#)

[Minn. Stat. § 471.895, subd. 3.](#)
[Minn. Stat. § 211A.01, subd. 5.](#)

Since so many individuals can get involved in the decision-making process, trying to distinguish between city “employees” and “officials” becomes quite difficult. As a result, the safest course of action is to assume the law applies to all employees, regardless of their title or job responsibilities.

2. Interested persons

State law defines an “interested person” as a person or representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

An interested person likely includes anyone who may provide goods or services to a city such as engineers, attorneys, financial advisers, contractors, and salespersons. However, virtually every resident or person doing business in the city could have a direct financial interest in a decision that an official is authorized to make. These may include:

- Property tax levies.
- Special assessments.
- Licenses and permits.
- Land use decisions.

If an individual could benefit financially from a decision or recommendation that a city official would be authorized to make, he or she might qualify as an interested person for purposes of the gift law.

B. Exceptions

The gift law allows the following types of gifts:

- Lawful campaign contributions.
- Services to assist an official in the performance of official duties. Such services can include (but are not limited to) providing advice, consultation, information, and communication in connection with legislation and services to constituents.
- Services of insignificant monetary value.
- A plaque or similar memento. Such items are permitted when given in recognition of individual services in a field of specialty or to a charitable cause.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or beverage given at a reception, meal, or meeting. This exception only applies if the recipient is making a speech or answering questions as part of a program located away from the recipient’s place of work.

RELEVANT LINKS:

[Minn. Stat. § 465.03.](#)
[Kelly v. Campaign Fin. and Pub. Disclosure Board](#), 679 N.W.2d 178 (Minn. Ct. App. 2004), *rev. denied* (Minn. July 20, 2004).

[Minn. Stat. ch. 10A.](#) See Section VII below, *Ethics in Government Act* 1978.

[MN Campaign Finance and Public Disclosure Board: Lobbyist Handbook.](#)

[Minn. R. 7515.0620.](#)

- Gifts between family members. However, the gift may not be given on behalf of someone who is not a member of the family.
- Gift because of the recipient's membership in a group. The majority of this group's members must not be local officials and an equivalent gift must be given or offered to the other group members.
- Food or beverages given to national or multi-state conference attendees. The majority of dues paid to the organization must be paid from public funds and an equivalent gift must be given or offered to all other attendees.

C. Gifts to cities

The law prohibits gifts to city officials, not to cities themselves. Cities may accept gifts of real or personal property and use them in accordance with the terms prescribed by the donor. A resolution accepting the gift and the donor's terms must receive an affirmative vote of two-thirds of the members of the council. A city may not, however, accept gifts for religious or sectarian purposes.

D. Metro area cities over 50,000

Metropolitan cities with a population over 50,000 must comply with additional regulations. Under the Ethics in Government Act, local officials in these cities also may not receive gifts from "lobbyists," though similar exceptions may apply.

The Minnesota Campaign Finance and Public Disclosure Board issues advisory opinions regarding the lobbyist gift ban. These opinions may be relevant to any Minnesota city struggling with the application or implication of a gift ban to a particular situation.

E. Municipal liquor stores

Municipal liquor store employees may not suggest, request, demand, or accept any gratuity, reward, or promise thereof from any representative of a manufacturer or wholesaler of alcoholic beverages. Any manager or employee who violates this provision is guilty of a gross misdemeanor.

IV. Conflicts of interest

Two broad types of conflicts of interest exist that city officials and municipal bodies may encounter: those involving contractual decisions, and those involving non-contractual decisions.

RELEVANT LINKS:

[Minn. Stat. § 471.87.](#)

[A.G. Op. 470 \(June 9, 1967\).](#)

[A.G. Op. 90-E-5 \(Nov. 13, 1969\).](#)
[A.G. Op. 90e-6 \(June 15, 1988\).](#)

[A.G. Op. 90e-6 \(June 15, 1988\).](#)

[Minn. Stat. § 412.311.](#)
See Section IV-A-2 below, *Exceptions and procedures Singewald v. Minneapolis Gas Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966).
[A.G. Op. 90a-1 \(Oct. 7, 1976\).](#)

Handbook, *The Home Rule Charter City*.

[Minn. Stat. § 471.881.](#)

A. Contracts

1. General prohibition

A public officer, who has authority to take part in making any sale, lease, or contract in his or her official capacity, shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially from it. The term “public officer” certainly includes mayors, councilmembers, or other elected officials. It also may include appointed officers and employees who have influence over the decision-making process.

The attorney general has advised that the conflict of interest law applies to any councilmember “authorized to take part in any manner” in the making of the contract. Simply abstaining from voting on the contract is not sufficient. The attorney general reasoned that if the Legislature had only wanted to prohibit interested officers from voting on the contract, it would not have used the word “authorized.”

A literal reading of the statute might suggest that it only applies to city officers who enter into contracts on behalf of the city. However, the attorney general has given the statute a broader interpretation, which could affect more officials than just those directly involved in the decision-making process. As a result, cities may want to take a conservative approach regarding contracts with any city official.

a. Statutory cities

Statutory cities must consider an additional restriction. No member of a statutory city council may have a direct or indirect interest in any contract the council makes (notwithstanding the limited exceptions discussed below). This restriction may affect some contractual situations not covered by the general prohibition. For example, even though the actual contract is not with a councilmember, the fact that he or she has an indirect interest in it could be an issue.

b. Home rule charter cities

Many home rule charters contain provisions that address conflicts of interest in contracts as well. Some charters go beyond the statute to prevent all city officers and employees from having an interest in a city contract, whether or not the individual has a role in the process. Because charter provisions vary from city to city, this memo does not discuss them in any detail. However, the exceptions listed below apply to all cities, regardless of any other statute or city charter provision to the contrary.

RELEVANT LINKS:

[Minn. Stat. § 471.88.](#)

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

[Minn. Stat. § 471.88, subd. 2.](#)

[Minn. Stat. ch. 118A.](#)

[Minn. Stat. § 471.88, subd. 3.](#)
[Minn. Stat. § 331A.04.](#)

2. Exceptions and procedures

Several important exceptions exist that apply to all cities. In these circumstances, a city may move forward with the matter if the interested officer discloses his or her interest at the earliest stage and abstains from voting or deliberating on any contract in which he or she has an interest. Generally, this exception only applies when a unanimous vote of the remaining councilmembers approves the contract. However, additional requirements or conditions, as discussed below, relate to the applicability of the exceptions.

A 1992 decision by the Minnesota Court of Appeals suggests that interested officers should abstain from voting, even when not expressly required to do so under the law. In that case, a township was challenged because an improvement project had not received the required four-fifths majority vote of the town board (two members whose properties would be assessed abstained). The court said the two interested board members were correct to abstain since their interests disqualified them from voting. As a result, the remaining three board members' unanimous vote was sufficient.

A city council may enter into the following contracts if the proper procedure is followed, even though the contract may impact the interests of one of its officers.

a. Bank or savings association

The city council may designate a bank or savings association that a city officer has an interest in 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 if the funds are protected in accordance with state law.

Procedure:

- The officer discloses his or her interest in the bank or savings association (this should occur when the bank or savings association is first designated or when the official is first elected or appointed, whichever is later). The disclosure is recorded in the meeting minutes and serves as notice of such interest for each successive transaction.
- The interested officer abstains from voting on the matter.
- The council approves the designation by unanimous vote.

b. Official newspaper

The city council may designate as the official newspaper (or publish official matters in) a newspaper in which a city officer has an interest.

RELEVANT LINKS:

LMC information memo,
Newspaper Publication.

Minn. Stat. § 471.88, subd. 4.

Minn. Stat. § 471.88, subd. 5.
Minn. Stat. § 471.345.
Minn. Stat. § 412.311.

Minn. Stat. § 471.88, subd. 5.
LMC information memo,
*Competitive Bidding
Requirements in Cities.*

Minn. Stat. § 471.89, subd. 2.
See *Contracting with a City
Official*, LMC Model
Resolution.

Minn. Stat. § 471.89, subd. 3.
See *Affidavit of Official
Interest in Claim*, LMC
Model Form.

However, this exception only applies if the interested officer’s newspaper is the only qualified newspaper available.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the designation by unanimous vote.

c. Cooperative association

A city may enter into a contract with a cooperative association of which the city officer serves as a shareholder or stockholder. This exception does not apply if the interested city officer is an officer or manager of the association.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the designation by unanimous vote.

d. Competitive bidding not required

A city may contract with a city officer when competitive bidding is not required. The municipal contracting act generally requires cities to go out for bid on the following types of contracts if they are estimated to exceed \$175,000:

- Sale, purchase, or rental of supplies, materials, or equipment.
- Construction, alteration, repair, or maintenance of property.

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

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the contract by unanimous vote.
- The council passes 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 as (or lower than) could be found elsewhere.
- Before a claim is paid, the interested officer must file an affidavit with the clerk that contains:
 - The name and office of the interested officer.
 - An itemization of the commodity or services furnished.

RELEVANT LINKS:

Minn. Stat. § 471.89, subd. 2.
Minn. Stat. § 365.37, subd 4.
Minn. Stat. § 415.01, subd. 2.
See *Ratifying an Emergency*,
Contract, LMC Model
Resolution.
Handbook, *Expenditures*,
Purchasing, and Contracts.

Minn. Stat. § 471.88, subd. 6.

A.G. Op. 358-E-4 (Jan. 19,
1965).
A.G. Op. 90-E (Apr. 17,
1978).

See, Section V below,
Compatibility of offices.

Minn. Stat. § 471.88, subd.
6a.

- The contract price.
 - The reasonable value.
 - The interest of the officer in the contract.
 - A declaration that the contract price is as low as or lower than could be obtained from other sources.
- In an emergency where the contract cannot be authorized in advance, payment must be authorized by resolution describing the emergency.

e. Volunteer fire department

Cities may contract with a volunteer fire department for the payment of compensation or retirement benefits to its members.

Confusion has arisen 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 actual contracts. Since cities do not usually contract with a municipal fire department, there is a possibility this exception may only apply to contracts with independent fire departments. However, the attorney general has issued opinions that imply that the exception can apply to both kinds of fire departments.

A councilmember interested in serving the city in multiple positions (for example, plowing streets or serving on the volunteer fire department) should also consider the compatibility of the functions and responsibilities of those positions.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the contract by unanimous vote.

f. Volunteer ambulance service

Cities may contract with a volunteer ambulance service for the payment of compensation or retirement benefits to its members. This provision is similar to the volunteer fire department exception.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the contract by unanimous vote.

RELEVANT LINKS:

[Minn. Stat. § 471.88, subd. 7.](#)

[Minn. Stat. § 471.88, subds. 9, 10.](#)
See, Section VII-C-2-d below, *HRAs and EDAs*

[Minn. Stat. § 471.88, subd. 11.](#)

[Minn. Stat. § 471.88, subd. 12.](#)

g. Municipal band

Cities may contract with a municipal band for the payment of compensation to its members.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the contract by unanimous vote.

h. EDAs and port authorities

An economic development authority (EDA), port authority, or seaway port authority may contract with firms engaged in the business of importing, exporting, or general trade that employ one of its commissioners.

Procedure:

- The interested commissioner abstains from voting on the matter.
- The authority approves the contract by unanimous vote.
- The commissioner does not take part in the determination (except to testify) and abstains from any vote that set any rates affecting shippers or users of the terminal facility.

i. Bank loans or trust services

Banks that employ a public housing, port authority, or EDA commissioner may provide loans or trust services to property affected by that authority.

Procedure:

- The commissioner discloses the nature of those loans or trust services of which he or she has personal knowledge.
- The disclosure is recorded in the meeting minutes.
- The interested commissioner abstains from voting on the matter.
- The authority approves the contract by unanimous vote.

**j. Construction materials or services
(cities with a population of 1,000 or less)**

A city with a population of 1,000 or less (according to the last federal census) may contract with one of its officers for construction materials and/or services through a sealed bid process.

Procedure:

- The interested officer abstains from voting on the contract.
- The council approves the contract by unanimous vote.

RELEVANT LINKS:

[Minn. Stat. § 471.88, subd. 13.](#)

[Minn. Stat. § 471.88, subd. 14.](#)

[Minn. Stat. § 471.88, subd. 15.](#)

[Minn. Stat. § 471.88, subd. 17.](#)

k. Rent:

Cities may rent space in a public facility to a public officer at a rate equal to that paid by other members of the public.

Procedure:

- The interested officer abstains from voting on the matter.
- The council approves the contract by unanimous vote.

l. Local development organizations

City officers may apply for a loan or grant administered by a local development organization. A “local development organization” is defined to include housing and redevelopment authorities (HRAs), EDAs, community action programs, port authorities, and private consultants.

Procedure:

- The interested officer discloses that he or she has applied for a grant.
- That interest is recorded in the official minutes.
- The interested officer abstains from voting on the matter.
- The local development organization approves the application by unanimous vote.

m. Franchise agreements

When a city enters into a franchise agreement or contract for utility services to the city, a councilmember who is an employee of the utility may continue to serve on the council during the term of the franchise or contract.

Procedure:

- The interested officer abstains from voting on any franchise matters.
- The reason for the interested councilmember’s abstention is recorded in the meeting minutes.
- The council approves the franchise agreement by unanimous vote.

n. State or federal grant programs

Cities may apply for and accept state or federal grants (housing, community, or economic development) which may benefit a public officer.

Procedure:

- The interested officer abstains from voting on matters related to the grant.

RELEVANT LINKS:

Minn. Stat. § 471.88, subd. 18.
Community Development Block Grant (CDBG).

Minn. Stat. § 471.88, subd. 19.

A.G. Op. 90a-1 (Apr. 14, 1960).
A.G. Op. 90-E-5 (Aug. 30, 1949).
A.G. Op. 90e-1 (May 12, 1976).
Minn. Stat. § 471.88.

A.G. Op. 90a-1 (May 16, 1952).
A.G. Op. 90b (Aug. 8, 1969).

- The governing body accepts the grant by unanimous vote.

o. Loans or grants—St. Louis County

A public officer may participate in a loan or grant program administered by the city with community development block grant funds or federal economic development administration funds. This exception applies only to cities in St. Louis County with a population of 5,000 or less.

Procedure:

- The public officer discloses that he or she has applied for the funds.
- The disclosure is recorded within the official meeting minutes.
- The interested officer abstains from voting on the application.
- The governing body approves the application by unanimous vote.

p. HRA officer loan

HRA officers may participate in a loan or grant program administered by the HRA utilizing state or federal funds.

Procedure:

- The public officer discloses that he or she has applied for the funds.
- The disclosure is recorded within the official meeting minutes.
- The public officer must abstain from voting on the application.
- The governing body approves the application by unanimous vote.

3. Application

The statutes apply to all kinds of contracts (formal or informal, written or unwritten) for goods and services. The statute applies not only when the city is the buyer, but also when the city is the seller. Generally, it seems the law intends 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. Even when a contract is allowed under one of the exceptions (such as for contracts for which bids are not required by law), councils should proceed with caution.

a. Business interests and employment

The attorney general has advised that a councilmember who holds stock in a corporation that contracts with the city has an unlawful interest and that a councilmember who acts as a subcontractor on a contract also has an unlawful interest.

RELEVANT LINKS:

[Singewald v. Minneapolis Gas Co., 274 Minn. 556, 142 N.W.2d 739 \(1966\). A.G. Op. 90-E-5 \(Nov. 13, 1969\).](#)

[A.G. Op. 90a-1 \(Oct. 7, 1976\).](#)

[A.G. Op. 90e-1 \(May 12, 1976\). A.G. Op. 90E-1 \(Dec. 6, 1955\).](#)

[A.G. Op. 90a-1 \(Mar. 30, 1961\).](#)

[A.G. Op.90a-1 \(Apr. 15, 1975\).](#)

The attorney general has also advised that a member of a governing body that receives a percentage of the money earned by a construction company for jobs done under a contract with it has an unlawful interest.

The Minnesota Supreme Court has held that employment by a company with which the city contracts may give a councilmember an indirect interest in the contract. However, 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, then the council may make the determination that no personal financial interest exists.

The attorney general further has stated that city councils may need to consider factors, other than employment, to determine the presence of a prohibited interest. The attorney general concluded that a council may contract with the employer if:

- 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.

The law 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.

More difficult questions can arise when a councilmember takes office after a city has entered into a contract. 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 one case, the attorney general advised that a councilmember was eligible for office and entitled to commissions on insurance premiums payable by the city on an insurance contract entered into before the person became a councilmember.

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.

RELEVANT LINKS:

[Minn. Stat. § 471.88, subd. 5.](#)
[Minn. Stat. § 471.345.](#)

LMC information memo,
[Competitive Bidding Requirements in Cities.](#)

[Minn. Stat. § 410.191.](#)
[Minn. Stat. § 412.02, subd. 1a.](#)

See Section V, *Compatibility of offices* below.
[“Compatibility of Offices,”](#)
House Information Brief
(July 2012).

Lewick v. Glazier, 116 Mich. 493, 74 N.W. 717 (1898).
Section IV-B below, *Non-contractual situations*.

[Minn. Stat. § 519.05.](#)
[Minn. Stat. § 412.311.](#)
[A.G. Op. \(June 28, 1928\).](#)
[A.G. Op. 90-C-5 \(July 30, 1940\).](#)

However, the city and the company could not enter into a new agreement as long as the interested councilmember held office.

Individuals faced with a possible conflict of interests should seek legal advice.

b. Elected officials and city employment

The League often receives questions about whether an elected city official can also be employed by the city. The exception to the conflict of interest law that allows the city to enter into a contract not required to be competitively bid with an interested official appears to allow a city, in certain situations, to hire an elected official as an employee, since both contracts for professional services and employment need not be competitively bid.

However, cities must consider several issues to determine the permissibility of hiring an elected official based on the specific facts of the situation.

(1) Full-time employment

Neither the mayor nor any city councilmember may be a “full-time, permanent” city employee. The city’s employment policy should define full-time, permanent employee.

(2) Part-time employment

For part-time employment, the city must analyze the compatibility of the two positions. If the positions are incompatible, an individual may not serve in both positions at the same time.

c. Contracts with family members

The conflict of interest laws does not directly address conflicts that may arise out of family relationships. The courts of other states generally have held that family relationship alone has no disqualifying effect on the making of a contract and that proof that a councilmember has a financial interest in the contract must exist. Non-contractual situations are similar.

Under existing law, spouses are responsible for each other’s necessities. A contract with the councilmember’s spouse in a statutory city may violate 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.

RELEVANT LINKS:

[A.G. Op. 90-b \(Apr. 5, 1955\).](#)
[A.G. Op. \(Dec. 9, 1976\)](#)
(informal letter opinion).

[Minn. Stat. § 363A.08, subd. 2.](#)

[Minn. Stat. § 363A.08, subd. 2.](#)

[Minn. Stat. § 15.054.](#)

[Minn. Stat. § 15.054.](#)

[A.G. Op. 469a-12 \(Aug. 30, 1961\).](#)
[A.G. Op. 90-a-1 \(Sept. 28, 1955\).](#)

[Minn. Stat. § 471.87.](#)
[Minn. Stat. § 609.43.](#)

[A.G. Op. 90a-1 \(Apr. 22, 1971\).](#)

However, in more recent opinions, the attorney general has taken the position that each case turns on its individual facts. 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.

In the alternative, if the facts show otherwise, the legality of the contract may be in doubt. In short, the mere fact of the relationship does not affect the validity of the contract.

Also, the Minnesota Human Rights Act prohibits discrimination in employment based upon marital status. As a result, making inquiries into the marital status of employees or applicants for city positions is not recommended.

d. Sale of city property

State law generally prohibits officers and employees of the state or its subdivisions from selling government-owned property to another officer or employee of the state or its subdivisions. This 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 falls within the scope of their duties.

Property no longer needed for public purposes may be sold to an employee (but not an officer) if the following conditions exist:

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

The attorney general has also concluded that cities may not contract to purchase land from or sell land to their city council members.

4. Violations

A determination that a public officer violated the conflict of interest law may result in a gross misdemeanor, fines up to \$3,000, and imprisonment for 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 be subject to criminal penalties as well.

RELEVANT LINKS:

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).

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.

When a city enters into a contract that is beyond the city's powers, the city generally will have no liability for the contract. Even when the contract falls within the city's powers, any contract made in violation of the unlawful interest statutes generally is void.

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 \(Cal. Ct. App. 1968\).](#)

[*f.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 decision.
- 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:

[Continental Prop. Grp., Inc. v. City of Minneapolis](#), No. A10-1072 (Minn. Ct. App. May 3, 2011) (unpublished opinion).

LMC information memo, [Special Assessment Toolkit](#).

[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).

Between these two extremes lie those proceedings affecting some lots or parcels, one of which a councilmember owns. Such situations raise questions of fact on whether the councilmember should not vote. In such circumstances, the council must decide whether the member should be disqualified—a decision which is subject to review in the courts if challenged. In many situations where the right to vote is questioned, an interested councilmember will refrain from participating in order to avoid the “appearance” of impropriety.

(2) Bias

Personal bias can also create concern. In one case, a biased councilmember voting on a land use matter made the council’s decision arbitrary.

As a result, the court found the city violated the property buyer’s due process rights and returned the matter for a new hearing—one where the biased councilmember would not participate.

(3) Local improvements and special assessments

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 found an interested county board member’s participation on a county ditch proceeding inappropriate, a subsequent case found otherwise.

The ditch case involved a proposed county ditch that bypassed a county board member’s property. Although the board member participated in preliminary proceedings, 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 said the board member should not have participated in any of the proceedings regarding the project.

The court in the second case found no disqualifying conflict of interest when four of the five managers of a watershed district owned land that would benefit from 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.

RELEVANT LINKS:

[A.G. Op. 59a-32 \(Sept. 11, 1978\).](#)

[A.G. Op. 471-f \(Sept. 13, 1963\).](#)

LMC information memo,
[Dangerous Properties.](#)

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

See Section VII-C-2-d, *HRAs
and EDAs.*

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

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 proceedings.

(4) Zoning

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

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.

(5) Condemnation

While a councilmember's ownership interest in land subject to condemnation seems to preclude participation in any council actions regarding the property, Minnesota courts have not ruled directly on this question. However, the Minnesota Supreme Court did not disqualify a county board member from participating in condemnation proceedings to establish a highway even though 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.

(6) Renewal and redevelopment

An interest in property subject to urban renewal may trigger disqualification. However, when the property sits within 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 or seek an opinion from the city attorney regarding the appropriateness of their participation.

(7) Church affiliation

The Minnesota Court of Appeals did not set aside a zoning action based on the participation by a zoning board member on a zoning variance requested by that member's church. The court found the nature of the financial interest could not have influenced the voting board member.

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 create a sufficient enough 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, subp. 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.

RELEVANT LINKS:

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

*McCutcheon v. City of St.
Paul*, 298 Minn. 443, 216
N.W.2d 137 (1974).

“Compatibility of Offices,”
House Information Brief
(July 2012).

5 U.S.C. §§ 7321-7326.
5 C.F.R. § 734.101.

Minn. Stat. § 43A.32.
MN Management & Budget,
400 Centennial Building, 658
Cedar Street, St. Paul, MN
55155; (651) 201-8000.

Minn. Stat. § 410.191.
Minn. Stat. § 412.02, subd.
1a.

- Abstain from voting or taking any other official actions unless the city attorney determines that there is no prohibited conflict of interest.

V. Compatibility of offices

Whether a city official can also serve the city or other government entity in some other capacity gets quite complicated. State law does provide some guidance on incompatible positions; however, in general, state law does not prevent a person from holding two or more governmental positions. However, keep in mind, without specific statutory authority, government officials cannot hold more than one position if the functions of those two positions are incompatible or if the jobs create a conflict between two different public interests.

The common-law doctrine of incompatibility provides some insight into what constitutes functions of two inconsistent offices. However, no clear definition of what constitutes an “office” for the purpose of this law exists. Certainly, it would include all elected offices.

However, it seems that the term “office” could 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.

A. Public employment

1. Federal employees

Federal employees generally cannot run in local partisan elections. An election is considered “partisan” if candidates are elected as representing political parties.

2. State employees

State employees generally can run for and hold local elected office as long as no conflict exists with their regular state employment. The commissioner of the department of management and budget will determine whether a conflict exists.

3. City employment

Neither the mayor nor any city councilmember may also work as a “full-time, permanent” city employee. The city’s employment policy defines full-time, permanent employment.

RELEVANT LINKS:

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

[Minn. Stat. § 410.05, subd. 1.](#)

[Minn. Stat. § 469.003, subd. 6.](#)
[Minn. Stat. § 469.095, subd. 2.](#)
[Minn. Stat. § 481.17.](#)

For “part-time” positions, it must be determined if the elements or responsibilities of the two positions are incompatible with one another. If the two positions are incompatible, an individual may not serve in both positions at the same time.

B. Incompatible offices—elements

Offices are generally incompatible when 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 to the position full-time.

In addition, positions may be determined incompatible with one another. This typically occurs when the holder of one position (or the group or board of which the person is a member):

- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other, for example, a person cannot supervise or evaluate himself or herself.
- Approves the official or fidelity bond of the other.

C. Specific offices

It is important to remember that incompatibility often depends on the nature of the offices and their relationship to one another. So, while offices may have been determined to be incompatible in the past, a different conclusion could be reached based on current relationships or responsibilities. A city official who is considering seeking an additional office should obtain a legal opinion from the city attorney on the compatibility of the two offices.

1. Compatible offices

The following offices are compatible pursuant to state statute:

- City charter commission member and any elective or appointed office other than judicial (however, the city charter may specifically exclude councilmembers from serving on the charter commission).
- City councilmember and HRA commissioner.
- City councilmember and EDA commissioner.
- City attorney and county attorney (in counties with a population under 12,000).

RELEVANT LINKS:

[A.G. Op. 358e-9 \(Feb. 10, 1912\).](#)
[A.G. Op. No. 639 \(Mar. 17, 1919\).](#)
[A.G. Op. 358e-3 \(July 29, 1997\).](#)
[A.G. Op. 90e \(Aug. 25, 1997\).](#)

[Minn. Stat. § 420.03.](#)
[Minn. Stat. § 273.061, subd. 1c.](#)

[A.G. Op. 63a11 \(Feb. 21, 1947\).](#)
[A.G. Op. 358e-3 \(Mar. 6, 1946\).](#)
[A.G. Op. 358e-7 \(Mar. 5, 1965\).](#)
[A.G. Op. 358 \(Dec. 18, 1970\).](#)
[A.G. Op. 358e-9 \(Dec. 13, 1939\).](#)
[A.G. Op. 358f \(May 21, 1954\).](#)
[A.G. Op. 358f \(June 30, 1955\).](#)
[A.G. Op. 358a-1 \(Feb. 25, 1958\).](#)
[A.G. Op. 218-R \(Feb. 25, 1946\).](#)

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

[A.G. Op. 358-E-9 \(Apr. 5, 1971\).](#)

In addition, the attorney general has found the following offices compatible:

- City mayor and county treasurer.
- City mayor and court administrator.
- City attorney and assistant county attorney.
- City councilmember and officer of nonprofit, public-access cable service provider.

2. Incompatible offices

State statute lists the following offices as incompatible:

- Firefighter's civil service commission member and any other office or employment under the city, the United States, or any of the state's political subdivisions.
- City councilmember and county assessor.

In addition, the attorney general has found the following offices incompatible:

- Mayor and city councilmember.
- Councilmember and city attorney.
- Councilmember and city treasurer.
- City attorney and city treasurer.
- Mayor and school board member.
- Councilmember and school board member.
- Councilmember and school board treasurer.
- City councilmember and county assessor.
- Councilmember and municipal liquor store manager.

3. Fire departments

City officials often ask if a member of the city fire department—perhaps the chief or another officer—can also serve on the city council.

Unfortunately, that question is not easy to answer.

In 1965, the attorney general advised that a councilmember could also serve as 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 a later opinion, the attorney general advised that the fire chief of a municipal fire department automatically vacate 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.

RELEVANT LINKS:

[A.G. Op. 90-E \(Apr. 17, 1978\).](#)

[Minn. Stat. § 412.152.](#)

[Minn. Stat. § 410.33.](#)

[A.G. Op. 358-E \(Feb. 18, 1958\).](#)
State ex rel. Hilton v. Sword,
157 Minn. 263, 196 N.W.
467 (1923).

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.

In 1997, the Minnesota Legislature attempted to clarify the issue by allowing one person to hold the position of statutory city mayor and 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 mayor and fire chief positions are not incompatible as long as:

- 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 that are inconsistent with the other.
- Neither office contracts with the other in their official capacity.
- 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, ambiguity still exists regarding what functions would be considered inconsistent.

Because each city has 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.

D. Consequence—automatic resignation

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.

RELEVANT LINKS:

[“Compatibility of Offices,”
House Information Brief
\(July 2012\).](#)

[League of Minnesota Cities
Insurance Trust \(LMCIT\)
Collaboration Services.](#)

[International City/County
Management Association’s
Code of Ethics \(June 2018\).](#)

[Minn. Stat. ch. 10A.
MN Campaign Finance and
Public Disclosure Board, 190
Centennial Office Building,
658 Cedar Street, St. Paul,
MN 55155; \(651\) 539-1180
or \(800\) 657-3889.](#)

[MN Campaign Finance and
Public Disclosure Board, 190
Centennial Office Building,
658 Cedar Street, St. Paul,
MN 55155; \(651\) 539-1180
or \(800\) 657-3889.](#)

Whether two offices are incompatible will depend upon the responsibilities of each of the offices and their relationship. Cities with questions may wish to secure a legal opinion from the city attorney or the attorney general.

VI. Codes of conduct

Councils often struggle with conveying ethical expectations of their councilmembers. In addition, the conflict of interest (or “ethics”) laws are scattered throughout many statutes and court cases, making them difficult to find and hard to interpret. As a result, some cities have developed and adopted their own policies on ethics and conflicts of interest. These policies must not conflict with state law and generally these policies appear in one of two forms: a values statement expressing core principles for ethical conduct, or a formal code of conduct. Cities may adopt a values statement or a code of conduct or both. However, it is important to note that state law does not require formal adoption of a city ethics policy.

If your city needs assistance with learning about codes of conduct, the League of Minnesota Cities Insurance Trust (LMCIT) Collaboration Services will work with you to get your city the help it needs. There is no charge for this service for LMCIT members.

A. Professional rules of conduct

Many professionals have adopted rules of conduct to guide individuals working within those fields. For example, the International City/County Management Association (ICMA) as well as our state’s affiliate (MCMA) has adopted a code of ethics that defines a manager’s core set of values. These values help define and guide a city manager’s ethical obligations to council, other staff, the general public, and the profession itself.

VII. Ethics in Government Act (campaign financing)

Minn. Stat. ch. 10A, also known as the Ethics in Government Act (Act), governs campaign financing. The following briefly overviews some of the major responsibilities of the act (as well as some related statutes) and how they impact some city officials.

The Minnesota Campaign Finance and Public Disclosure Board (Board) administers the act. The Board has four primary responsibilities:

RELEVANT LINKS:

[Minn. Stat. § 10A.02, subd. 12.](#)
[MN Campaign Finance and Public Disclosure Board](#), 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155; (651) 539-1180 or (800) 657-3889.

[Minn. Stat. § 10A.01.](#)

[Minn. Stat. § 10A.01, subd. 22.](#)

[Minn. Stat. § 10A.01, subd. 24.](#)
[Minn. Stat. § 473.121, subd. 2.](#)

[Minn. Stat. § 10A.01, subd. 21.](#)

- Campaign finance registration and disclosure.
- Public subsidy administration.
- Lobbyist registration and disclosure.
- Economic interest disclosure by public officials.

Individuals subject to the Act may request an advisory opinion from the Board to guide their compliance with the law. Requests for an opinion (as well as the opinions themselves) are classified as “nonpublic” data, but a “public” version of the opinion is published on the Board’s website.

A. Application

All candidates for and holders of state constitutional or legislative offices, as well as other “lobbyists,” “principals” and “public officials” must comply with the Act. In addition, while not applicable to all city officials, the Act does apply to “local officials” serving “Metropolitan government units.”

1. Local officials

A “local official” represents a person who falls into one or both of these categories:

- Holds elected office.
- Is appointed to or employed in a public position in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

2. Metropolitan government units

The Act applies to local officials in “metropolitan government units,” which includes cities with populations over 50,000 in the seven-county metro area.

3. Advocates

The Act contains broad reporting requirements for individuals and associations who try to influence the decision-making process.

a. Lobbyists

A “lobbyist” is an individual who:

RELEVANT LINKS:

[Minn. Stat. §§ 10A.03-.05.](#)
“Lobbyist Handbook,”

[Minn. Stat. § 10A.01, subd. 33.](#)

[Minn. Stat. § 10A.04, subd. 6.](#)

[Minn. Stat. § 10A.04.](#)
[Minn. Stat. § 10A.01, subd. 21.](#)

[Minn. Stat. § 10A.071, subd. 1\(b\).](#)
See Section III, *Gifts*.

[Minn. Stat. § 10A.071, subd. 2.](#)

[Minn. Stat. § 10A.071, subd. 3.](#)

- Is paid more than \$3,000 from all sources in any year attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating (or urging others to communicate) with public officials or local officials.
- Spends more than \$250 (not including travel expenses or membership dues) in any year attempting to influence legislative or administrative action, or the official actions of a metropolitan government unit, by communicating (or urging others to communicate) with public officials or local officials.

Lobbyists must register with and report their expenditures to the Board by January 15 and June 15 each year. These reports must include gifts and items valued at \$5 or more given to local officials, state lawmakers, or other public office holders.

b. Principals

A “principal” is an individual or association that spends more than \$500 in any calendar year for a lobbyist or \$50,000 or more in a calendar year to influence legislative action, administrative action, or the official action of metropolitan governmental units. Principals must file spending reports with the Board.

c. City advocates

City employees and non-elected city officials who spend more than 50 hours in any month on lobbying activities must also register and submit expense reports with the Board.

B. Gift ban

A “gift” is defined as money, property (real or personal), a service, a loan, the forbearance or forgiveness of debt, or a promise of future employment, given and received without the giver receiving equal or greater value in return.

1. Prohibition

A lobbyist or principal may not give gifts, or request that others give gifts to officials, and officials may not accept gifts from lobbyists or principals.

2. Exceptions

The law allows the following types of gifts under specific exceptions to the general ban:

RELEVANT LINKS:

[Minn. Stat. § 10A.01, subd. 11.](#)

[Minn. Stat. § 10A.02, subd. 12.](#)
[MN Campaign Finance and Public Disclosure Board](#), 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155; (651) 539-1180 or (800) 657-3889.

[Minn. Stat. § 10A.01, subd. 24.](#)
[MN Campaign Finance and Public Disclosure Forms.](#)

[Minn. Stat. § 10A.09.](#)

- Contributions to a political committee, political fund, principal campaign committee, or party unit.
- Services to assist an official in the performance of official duties. Such services can include advice, consultation, information, and communication in connection with legislation and services to constituents.
- 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 with a resale value of \$5 or less.
- Food or beverage given at a reception, meal or meeting. This exception applies if the recipient is making a speech or answering questions as part of a program that is located away from the recipient's place of work. This exception also applies if the recipient is a member or employee of the legislature and an invitation to attend was given to all members of the legislature at least five days before the date of the event.
- Gifts received because of membership in a group. This exception does not apply if the majority of group members are officials. In addition, an equivalent gift must also be offered to the other members of the group.
- Gifts between family members. However, the gift may not be given on behalf of someone who is not a member of the family.

3. Advisory opinions

The Board issues advisory opinions regarding the lobbyist gift ban. These opinions may be relevant to any Minnesota city struggling with the application or implication of a gift ban to a particular situation.

C. Filings and disclosures

Chapter 10A applies to "metropolitan governmental units" and includes some cities. Only local officials (including candidates for elected office) in the seven county metropolitan area cities with a population over 50,000 must submit the following to the Board.

1. Statements of economic interest

Local officials (including candidates for elected office) in cities within the seven-county metropolitan area with a population over 50,000 must file a statement of economic interest with the Board.

RELEVANT LINKS:

[Minn. Stat. § 10A.09, subd. 1.](#)

[Minn. Stat. § 10A.09, subd. 2.](#)
MN Campaign Finance and Public Disclosure Board: [Elected Statement of Economic Interest](#) and [Appointed Statement of Economic Interest](#).

[Minn. Stat. § 10A.09, subd. 5.](#)

[Minn. Stat. § 10A.09, subd. 6.](#)

a. Time for filing

An individual must file within one of the following timeframes:

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

b. Notification

The county auditor must notify the Board upon receipt of an affidavit of candidacy or a petition to appear on the ballot from someone required to file a statement of economic interest. Likewise, an official who nominates or employs an individual required to file a statement of economic interest must notify the Board. The county auditor or nominating official must provide:

- The individual's name.
- The date of the affidavit of candidacy, petition, or nomination.

c. Form

Local officials 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).
- A listing of all real property interests in the state (excluding homestead).
- Any interests connected to pari-mutuel horse racing in the U.S. or Canada.
- A listing of the principal business or professional activity category of each business where the individual receives more than \$50 in any month as an employee, but only if the individual has a 25% or more ownership interest in the business.
- A listing of each principal business or professional activity category where the individual has received more than \$2,500 in compensation in the past 12 months as an independent contractor.
- The full name of each security with a value of more than \$10,000 owned in part or in full by the public official at any time during the reporting period.

Local officials must file annual statements by the last Monday in January of each year. The annual statement must cover the period through Dec. 31 of the year prior to the year when the statement is due.

RELEVANT LINKS:

[Minn. Stat. § 10A.09, subd. 6a.](#)

[Minn. Stat. § 356A.06, subd. 4\(c\).](#)
[Minn. Stat. § 424A.04.](#)

[Minn. Stat. § 356A.06, subd. 4.](#)

[Minn. Stat. § 383B.053.](#)

The annual statement must include the amount of each honorarium in excess of \$50 received since the previous statement and the name and address of the source of the honorarium. The board must maintain each annual statement of economic interest submitted by an officeholder in the same file with the statement submitted as a candidate. An individual must file the annual statement of economic interest required by this subdivision to cover the period for which the individual served as a public official even though, at the time the statement was filed, the individual no longer is holding that office as a public official.

d. Access

The local official must file the statement with the city council. If an official position is both a public official and a local official of a metropolitan governmental unit, the official must also file the statement with the Board. Statements of economic interest are classified as public data.

e. Pension plan trustees

Each member of the governing board of a public pension plan must file a statement of economic interest. This applies to the trustees of a local relief association pension plan and includes ex-officio members, such as the mayor and city clerk. The statement must include:

- The person's principal occupation and place of business.
- Whether or not the person has an ownership of or interest of ten percent or greater 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 relationships or financial arrangements that could give rise to a conflict of interest.

The statement must be filed annually with the plan's chief administrative officer and be available for public inspection during regular office hours. The statement must also be filed with the Board by January 15 of each year.

f. Hennepin County

Additional disclosure requirements for elected officials of cities in Hennepin County with a population of 75,000 or greater exist.

RELEVANT LINKS:

[Minn. Stat. § 10A.07.](#)
[Minn. Stat. § 10A.01, subd. 22.](#)
[Minn. R. ch. 4515.](#)

[Minn. Stat. § 10A.07.](#)

MN Campaign Finance and Public Disclosure Board:
[Potential Conflict of Interest Notice.](#)

[Minn. Stat. § 10A.07, subd. 1.](#)

[Minn. Stat. § 10A.07, subd. 2.](#)
[Minn. R. 4515.0500.](#)

[Minn. Stat. § 10A.07, subd. 2.](#)
MN Campaign Finance and Disclosure Board: [Inability to Abstain from Potential Conflict of Interest Form.](#)

2. Conflicts of Interest

Local officials (including city employees with authority to make, recommend, or vote on major decisions regarding the expenditure or investment of public funds) must disclose certain information if they will be involved in decisions or take actions that substantially affect their financial interests or those of a business with which they are associated. However, disclosure is not required if the effect on the official is no greater than on others in that business classification, profession, or occupation more generally.

a. Disclosure

When conflicts arise, the interested official or employee must:

- 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.
 - If the official is an employee, notice should be provided to his or her immediate supervisor.
 - If the official reports directly to the city council, notice should be given to the council.
 - If the official is appointed, notice should go to the chair of that board, commission, or committee. If the chair has the conflict, notice should go to the appointing authority—the city council.
 - If the official is elected, the written statement should go to the presiding officer (typically the mayor).
 - If the potential conflict involves the mayor, notice should be provided to the acting presiding officer.

If a potential conflict arises and there is not time to provide written notice, the official must orally inform his or her supervisor or the city council.

b. Delegation or abstention

The official's supervisor must assign the matter to another employee who does not have a potential conflict of interest. If there is no immediate supervisor (as is the case with the city council), the official must abstain from voting or otherwise influencing the decision-making process.

c. Inability to abstain

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 official must file this statement with the city council within a week of the action.

RELEVANT LINKS:

[Minn. Stat. § 469.009.](#)
[Minn. Stat. § 469.098.](#)

[“Local Officials in a Metropolitan Government Unit Handbook,”](#) MN Campaign Finance and Public Disclosure Board (Feb. 2010).

[MN Campaign Finance and Public Disclosure Board](#), 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155; (651) 539-1180 or (800) 657-3889.

d. HRAs and EDAs

Before taking an action or making a decision which could substantially affect the commissioner's (or an employee's) financial interests (or those of an organization with which the commissioner or an employee is associated), commissioners or employees of an HRA or EDA must disclose their interests. Individuals face criminal penalties for noncompliance.

D. Violations

Individuals, subject to the Act, can be personally responsible for any sanctions that result from failing to comply with the reporting requirements. Individuals may be subject to criminal and civil penalties if they:

- Knowingly file false information or knowingly omit required information.
- Willfully fail to amend a filed statement.
- Knowingly fail to keep records for four years from the date of filing.

Local officials with questions concerning their responsibilities under the Act should contact their city attorney or Board staff.

VIII. Conclusion

All public officials face ethical challenges during the term of their public service. Reviewing the roles elected and appointed officials play within city government helps councils and staff sort out responsibilities, identify and mitigate conflicts of interests, and generally avoid the appearance of impropriety.