



## 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 a code of conduct and statement of values; contains 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 are not required to pass a civics test, attend mandatory trainings, obtain a particular 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 are also 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 that ethical questions can be difficult to answer. Not all situations fit neatly into current guidelines, so conduct may not clearly be prohibited, but still seems inappropriate. This appearance of impropriety can be very damaging to a councilmember's image (as well as the city's reputation) and may need to be considered.

## 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

Under Minnesota law, cities are 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 cities are where most people live, the basic goal of city government is to provide services. In many parts of the state, cities are the main governmental entities.

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

- 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 cornerstone of city government in Minnesota is the elected city council. 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.](#)

[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 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 as those serving when the council originally took action.

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council, and not individual councilmembers, that must supervise administrative officers, formulate policies, and exercise city powers.

### III. Gifts

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 something of equal or greater value in return.

#### A. General prohibition

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

##### 1. Local officials

A "local official" is 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, since the term "local official" is not further defined, it is not known if the law is meant 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.](#)

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

## 2. Interested persons

An “interested person” is 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. But, 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 have a direct financial interest in a decision or recommendation that a city official would be authorized to make, he or she might be considered an interested person for purposes of the gift law.

## B. Exceptions

The following types of gifts are permitted under exceptions to the gift law:

- 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 that is 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.](#)  
Section VII, *Ethics in Government Act*.

Minnesota Campaign Finance and Public Disclosure Board: [Lobbyist Gift Ban](#).

[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 are subject to additional regulations. Under the Ethics in Government Act, local officials in these cities are also prohibited from receiving gifts from "lobbyists," though there are similar exceptions that 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

There are two broad categories of conflicts of interest 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.](#)  
[Section IV-A-2, \*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

Public officers are generally prohibited from having a personal financial interest in a sale, lease or contract they are authorized to make in their official capacity. The term “public officer” certainly includes mayors, councilmembers, or other elected officials. It may also include appointed officers and employees who are able to influence the decision-making process.

The attorney general has advised that the conflict of interest law applies to any councilmember “who is 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 who are directly involved in the decision-making process. As a result, it may be wise 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 that are not covered by the general prohibition. For example, even though the actual contract is not made 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, they are not covered in this memo in any detail. However, the exceptions discussed 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

There are several important exceptions 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, an exception may only be used by a city when approved by unanimous vote of the remaining councilmembers. There are also additional requirements for some of the exceptions that are discussed below.

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 is 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 laws is not required. The municipal contracting act generally requires the following types of contracts that are estimated to exceed \$100,000 to be bid:

- 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 it is unsure about 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.  
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).

Section V, *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.

There is some question 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 who is interested in serving the city in multiple positions, for example, plowing streets or serving on the volunteer fire department, should also consider whether the functions and responsibilities of those positions are compatible.

#### 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.](#)  
Section VII-C-2-d, *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.

**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, subd. 5.](#)

**Procedure:**

- The interested officer abstains from voting on matters related to the grant.
- The governing body accepts the grant by unanimous vote.

**o. Loans or grants—St. Louis County**

A public officer is eligible to 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 is limited to cities in St. Louis County with a population 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 meetings.
- 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 meetings.
- 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. The law would appear 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.

## RELEVANT LINKS:

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

[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. 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 is a subcontractor on a contract has an unlawful interest. 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 the city contracts with may give a councilmember an indirect interest in the contract. On the other hand, 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, the council may determine that no personal financial interest exists.

The attorney general has said that factors other than employment may have to be considered to determine whether a prohibited interest is present. 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.

Questions that are more difficult 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.

## RELEVANT LINKS:

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

[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.](#)

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

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

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. However, no new agreement could be entered into 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 is often asked if an elected city official can also be employed by the city. There is an exception to the conflict of interest law that allows a contract to be made with an interested official if the contract is not required to be competitively bid. This exception appears to permit a city to hire an elected official as an employee, since contracts for professional services and employment are not required to be competitively bid.

However, there are several issues that must be considered to determine whether this is permissible in any specific situation.

#### **(1) Full-time employment**

Neither the mayor nor any city councilmember may also be a “full-time, permanent” city employee. Full-time, permanent employment is defined by the city's employment policy.

#### **(2) Part-time employment**

For part-time employment, it must be determined if the two positions are incompatible. 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 do 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. There must generally be proof that a councilmember has a financial interest in the contract. Non-contractual situations are similar.

**RELEVANT LINKS:**

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

[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 \(Sept. 28, 1955\).](#)

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.

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.

However, if the facts tend to 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.

While it is easier to find that a councilmember has a personal financial interest in a contract involving his or her spouse, a marital relationship alone may not make the contract invalid.

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.

**d. Sale of city property**

Officers and employees of the state or its subdivisions are generally prohibited 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 is in the normal course of their duties.

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

- 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.



## RELEVANT LINKS:

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

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

*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).

## 4. Violations

A public officer who violates the conflict of interest law is guilty of a gross misdemeanor and can be fined up to \$3,000 and imprisoned 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.

When a city enters into a contract that is beyond the city's powers, there will generally be no city liability for the contract. Even when the contract is within the city's powers, any contract made in violation of the unlawful interest statutes is generally void. As a result, such a contract cannot be the basis of a lawsuit.

However, a city may be legally blocked from performing an 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. It is the conflict of interest that matters. Even if the councilmember acted in good faith and the contract was fair and reasonable, the contract is generally void if it is prohibited by the conflict of interest.

When a prohibited contract is made with an interested councilmember, the councilmember may not recover on the contract. Nor may a councilmember recover value on the basis of an implied contract. If a councilmember has already 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 made an unlawful sale of goods to the city and the goods can be returned, a court will probably order it and prohibit any payment for the goods. This might be ordered when a lot has been purchased from a councilmember and no building has been erected on it, or if supplies, such as lumber, have been bought and not yet used. However, if the goods cannot be returned and if the contract was not beyond the powers of the city and there was no fraud or collusion in the transaction, the court will determine the reasonable value of the property and permit payment on the basis of the value received.

## RELEVANT LINKS:

[\*Nevada Commission on Ethics v. Carrigan\*, 131 S. Ct. 2343 \(2011\).](#)

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

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

In case of doubt, it is wise to assume a city 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 personal financial interest in an official non-contractual action is generally disqualified from participating in the action. This is especially 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 is quasi-judicial, 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 there is a disqualifying personal interest, the action is not necessarily void. In contrast to the rules regarding conflict of interest in contract situations, the official action may be 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 interests 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.

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.

**RELEVANT LINKS:**

[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).

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

Section V, *Compatibility of offices.*

[Minn. Stat. § 415.11.](#)  
[A.G. Op. 471-K \(May 10, 1976\).](#)

[Minn. Stat. § 412.191, subd. 1.](#)

A very relevant factor is whether other means are available 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 be 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 are probably prohibited from judging themselves on an offense in which the majority of the council participated. Likewise, determination of a councilmember's residency may be 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 he or she resigns from their existing position before the new appointment is made. However, councilmembers may be appointed mayor or clerk, but may not vote on their appointment.

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 is a question 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 is involved in 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.

## RELEVANT LINKS:

[A.G. Op. \(Apr. 14, 1975\)](#)  
(informal letter opinion).

[A.G. Op. \(Dec. 9, 1976\)](#)  
(informal letter opinion).

[Minn. Stat. § 363A.08, subd. 2.](#)

[A.G. Op. 430 \(Apr. 28, 1967\).](#)

[A.G. Op. 90e \(Aug. 25, 1997\).](#)

### **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 also advised that a prohibited interest does not necessarily arise when the spouse of a city employee is elected mayor. The opinion carefully avoids any statement about future action of the council on the existing employment relationship.

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 there is no personal financial interest 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 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.

## 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).

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 will likely disqualify the member from participating in the proceedings. However, the councilmember should still be able to submit the required application to the city.

Between these two extremes are those proceedings affecting some lots or parcels, one of which a councilmember owns. In such situations, it is a question of fact 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 be a concern. In one case, a biased councilmember voting on a land use matter made the council's decision arbitrary.

As a result, the court determined that the property buyer's due process rights were violated 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. These two cases can also be distinguished on their facts.

The first concerned 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.

## RELEVANT LINKS:

[Lenz v. Coon Creek Watershed Dist.](#), 278 Minn. 1, 153 N.W.2d 209 (1967).

[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).

The court in the second case found there was no disqualifying conflict of interest when four of the five managers of a watershed district owned land that would be benefited by 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.

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 when 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.

## RELEVANT LINKS:

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), *abrogated on other grounds by Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010).

[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](#).

### **(6) Renewal and redevelopment**

An interest in property subject to urban renewal may be grounds for disqualification. However, when the property is 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 held that a zoning board member was not disqualified from voting 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. The person's membership in the church, without evidence of a closer connection, was not a sufficiently 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.



## RELEVANT LINKS:

[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 \(Apr. 29, 1952\).](#)

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

[Minn. R. 7515.0430, subp. 5.](#)

## (2) Vacation

It is arguable that a street vacation is not essentially different from the establishment of a street, where abutting owners have been held not to have a disqualifying interest. However, the attorney general 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 is an applicant 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 if 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 was personally interested. 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. However, whether an individual's personal interest is sufficient to disqualify him or her from voting on the decision is 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 was disqualified from voting 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.

## RELEVANT LINKS:

*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).  
“Voting Riddles,” *Minnesota  
Cities* (Apr. 2007, p. 19).

*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).

### 3. Consequences

Actions taken where a councilmember with a disqualifying interest participated may be valid 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, the court held that the interested commission member’s participation in a unanimous decision did not invalidate the commission’s decision.

Councilmembers who have a disqualifying interest in a matter are generally 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.
- 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 is quite complicated. State laws generally do not prevent a person from holding two or more governmental positions. However, without specific statutory authority, government officials cannot hold more than one position if the functions are incompatible or if the jobs create a conflict between two different public interests.

The common law doctrine of incompatibility applies to the functions of two inconsistent offices. However, there is no clear definition of what constitutes an “office” for the purpose of this law. Certainly it would include all elected offices.

## RELEVANT LINKS:

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

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

Minn. Stat. § 43A.32.  
Minnesota 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.

*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).

But, it can 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 are generally prohibited from being candidates 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 there is no conflict 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 be a “full-time, permanent” city employee. Full-time, permanent employment is defined by the city's employment policy.

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 office devote to the position full-time.

In addition, positions may be determined to be 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.

**RELEVANT LINKS:**

[Minn. Stat. § 410.05, subd. 1.](#)

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

[A.G. Op. 358e-9 \(Feb. 10, 1912\).](#)  
[A.G. Op. No. 639 \(Mar. 7, 1919\).](#)  
[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. 358e-1 \(Feb. 21, 1947\).](#)  
[A.G. Op. 358e-3 \(Mar. 6, 1946\).](#)

- 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).

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**

The following offices are incompatible pursuant to state statute:

- 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.

## RELEVANT LINKS:

[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 \(Apr. 5, 1971\).](#)

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

[Minn. Stat. § 412.152.](#)

[Minn. Stat. § 410.33.](#)

- 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 are often interested in whether a member of the city fire department—perhaps the chief or another officer—can also serve on the city council. It is, unfortunately, not an easy question to answer.

In 1965, the attorney general advised that a councilmember could also be 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 vacated 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.

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.

## RELEVANT LINKS:

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

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

- 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, there is still some vagueness 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.

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**

Ethical expectations can be difficult to convey. 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 be consistent with state law and generally take 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.

### **A. LMC Ethics Advisory Panel**

The work of the LMC Ethics Advisory Panel resulted in two documents—the Model Statement of Values and the Template Code of Conduct.

## RELEVANT LINKS:

LMC's Ethics Advisory Panel [Model Statement of Values](#).

LMC's Ethics Advisory Panel [Template Code of Conduct](#).

### 1. Model Statement of Values

The Model Statement of Values is an aspirational document, intended to provide a framework for ethical decision-making. The values it promotes can only be self-enforced, primarily by providing an ethical anchor, raising the quality of discussion and expectations among city officials and those in the community, and by appealing to the conscience of the individual. It would be difficult and likely counterproductive to suggest that such values could be subject to formal review or enforcement action.

Cities may choose to use the Model Statement of Values in a variety of ways, including:

- Providing a copy to all elected officials, advisory commission members, and even city staff members for their reference.
- Using it as the basis for a local workshop or just a discussion to encourage more city and community dialogue about what ethics means in your city.
- Formally adopting it as a statement of the way in which city officials and the community would like to see public business conducted.

### 2. Template Code of Conduct

The Template Code of Conduct is a law-based document, incorporating very specific standards of behavior that are already written into state statute or that have been handed down by court rulings. The Code of Conduct also offers legal methods for dealing with infractions. By adopting this code at the municipal level, a city council can take self-initiated action to see that these standards are upheld in the community, rather than having to wait on civil litigation initiated by citizens or criminal prosecution by the county attorney.

The Template Code of Conduct should be considered for formal adoption as a city ordinance. The template can locally codify existing and relatively well articulated standards of conduct already required by state law, so enforcement through quasi-judicial review is feasible. When adopting the code, cities need to consider to whom the code applies. Cities also need to formulate a hearing procedure.

This document has been carefully reviewed by LMC legal counsel, and it is recommended that any modifications be considered only after careful review by the city attorney. Cities that choose not to formally adopt the template may still find the document to be a useful and concise reference piece for individual city officials.



## RELEVANT LINKS:

[International City/County Management Association's Code of Ethics](#) (June 2015).

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

[Minnesota 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.02, subd. 12. Minnesota 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.](#)

## B. 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)

In Minnesota, campaign financing is governed by Minnesota Statute chapter 10A, also known as the Ethics in Government Act (Act). The following is a brief overview of some of the major responsibilities of the Act (as well as some related statutes) and how they impact some city officials.

The Act is administered by the Minnesota Campaign Finance and Public Disclosure Board (Board). The Board has four primary responsibilities:

- 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" are subject to 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" is a person who falls into one or both of these categories:

**RELEVANT LINKS:**

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

[Minn. Stat. § 10A.01, subd. 21.](#)

[Minn. Stat. §§ 10A.03-.05. "Lobbyist Handbook," Minnesota Campaign Finance and Public Disclosure Board \(June 2015\).](#)

[Minn. Stat. § 10A.01, subd. 33.](#)

[Minn. Stat. § 10A.04, subd. 6.](#)

- 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:

- 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.

## RELEVANT LINKS:

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

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

[Minn. Stat. § 10A.071, subd. 2.](#)

[Minn. Stat. § 10A.071, subd. 3.](#)

[Minn. Stat. § 10A.01, subd. 11.](#)

### **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 following types of gifts are permitted under exceptions to the general ban:

- 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.

## RELEVANT LINKS:

[Minn. Stat. § 10A.02, subd. 12.](#)  
[Minnesota 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.](#)  
[Minnesota Campaign Finance and Public Disclosure Forms](#).

[Minn. Stat. § 10A.09.](#)  
[Minn. R. ch. 4505.](#)

[Minn. Stat. § 10A.09, subd. 1.](#)

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

[Minn. Stat. § 10A.09, subd. 5.](#)

### 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.

##### 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.

## RELEVANT LINKS:

[Minn. Stat. § 10A.09, subd. 6.](#)  
[Minn. R. 4505.0900.](#)

[Minn. Stat. § 10A.09, subd. 6a.](#)

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

[Minn. Stat. § 356A.06, subd. 4.](#)

- 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.

Local officials must file annual statements by the last Monday in January of each year, as well as a final statement when leaving office.

### **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.

**RELEVANT LINKS:**

[Minn. Stat. § 383B.053.](#)

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

[Minn. Stat. § 10A.07.](#)

Minnesota 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.](#)

**f. Hennepin County**

There are additional disclosure requirements for elected officials of cities in Hennepin County with a population of 75,000 or greater.

**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.

## RELEVANT LINKS:

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

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

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

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

### 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.

### 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 are required to disclose their interests. Individuals face criminal penalties for noncompliance.

## D. Violations

Individuals who are subject to the Act can be personally responsible for any sanctions that result from failing to comply with the reporting requirements. Criminal and civil penalties are available for individuals who:

- 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.