

March 12, 2004

The Honorable Brian LeClair
The State Senate
149 State Office Building
St. Paul, MN 55155

Subj: Advisory Opinion on Conflict of Interest

Dear Senator LeClair:

Your letter of February 9, 2004, requested the Subcommittee on Ethical Conduct to give you an advisory opinion on whether you have a conflict of interest as chief author of S.F. No. 15 or S.F. No. 1602. At your request, the Subcommittee held a public meeting March 10, 2004, at which you explained your request and responded to questions from the subcommittee about your potential conflicts of interest. The Subcommittee determined that you do not have a conflict of interest as chief author of either of the two bills. This letter serves as a public record of the Subcommittee's advice to you

1. Facts

S.F. No. 15 increases the income tax credit for long-term care insurance policy premiums from \$100 to \$500.

S.F. No. 1602 proposes to bring Minnesota's income tax treatment of Health Savings Accounts into conformity with the federal income tax treatment of those accounts.

You are a licensed insurance agent with, and the Vice President of, LeClair Insurance. You are a salaried employee there. You do not receive any income from commissions and do not hold any ownership stake in the company. Your father, Ed LeClair, is the sole owner of all shares in the company.

LeClair Insurance recruits and trains agents to sell life and health insurance, including major medical, long-term care, Medicare supplement, and dental. When an agent sells an insurance product, the agent earns the bulk of the commission, but LeClair Insurance also earns a small commission from the insurance company.

Passage of S.F. No. 15 or S.F. No. 1602 would potentially increase the sale of long-term care insurance and Health Savings Accounts in this state. Long-term care insurance is the largest and fastest growing part of LeClair Insurance's business. LeClair Insurance would potentially share in this increase in sales, but not any more than any other insurance agency in this part of the business.

If the company does well, you will presumably do well, but only indirectly, since you are on salary and do not receive a commission on sales. Your father, as owner of the company, will benefit directly from any increase in sales, but not necessarily any more than others in the same part of the business.

2. Conflict of Interest Law

Our Constitution creates a part-time legislature. The Legislature is prohibited from meeting after the Monday after the third Saturday in May or for more than 120 days in a biennium. The reason we have a part-time legislature is so that we may have a citizen-legislature, filled with members who must spend the greater part of each year earning a living under the laws they have enacted. We have thought this is good, because it helps to keep legislators in touch with the real-world problems of their constituents. However, it also means that legislators may occasionally have conflicts between their official duties and their private employment.

Our conflict of interest law is primarily a disclosure law. It assumes that a public official will occasionally have conflicts of interest. This is especially true for legislators. When a conflict arises, a public official must disclose the conflict and ask to be excused from taking part in the action or decision in question.

The kinds of conflicts the law is concerned with are financial conflicts, ones where the personal financial interests of the official will be affected by a decision the official makes. The law describes a conflict of interest situation as one where:

A public official . . . in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation

Minn. Stat. § 10A.07, subd. 1 (2002).

3. Opinion

You do not have a conflict of interest as author of either of these two bills.

Passage of either bill may result in the sale of more insurance by LeClair Insurance, but the potential financial benefit to LeClair Insurance is no greater than for other companies in the life and health insurance business. LeClair Insurance will benefit from the passage of these bills only to the extent it succeeds in the competitive marketplace for these kinds of insurance policies.

As a salaried employee, and not an owner, of LeClair Insurance, any benefit the company receives from selling more insurance will not be passed directly to you. Therefore, you do not have a conflict of interest. Any direct benefit your father may receive does not create a conflict of interest for you.

Sincerely,

James P. Metzen, Chair
Subcommittee on Ethical Conduct

JPM

cc: Senator Dennis R. Frederickson
Senator Mee Moua
Senator Thomas M. Neuville
Peter S. Wattson