



President of the Senate
JAMES METZEN
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322 State Capitol Building
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606

Senate

State of Minnesota

March 12, 2004

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And
312 Deerwood Court
South St. Paul, MN 55075
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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.

President of the Senate - Committees: Commerce and Utilities Committee - State Government Budget Division - Capital Investment - Rules and Administration Committee - **Boards/Commissions:** Legislative Coordinating Commission - LCC Salary & Budget Review Subcommittee - Legislative Audit Commission



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).

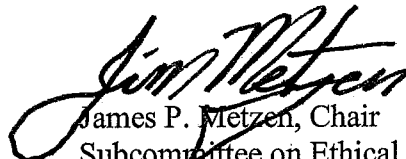
3. Opinion

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. Metzger, Chair
Subcommittee on Ethical Conduct

JPM

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

BRIAN LeCLAIR
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Senate

State of Minnesota

February 9, 2004

VIA HAND DELIVERY

The Honorable Jim Metzen
Chair, Subcommittee on Ethical Conduct
Minnesota Senate
322 State Capitol
75 Rev. Dr. MLK Jr. Blvd.
Saint Paul, MN 55155

Dear Senator Metzen:

With this written request, I am asking for an advisory opinion from the Subcommittee on Ethical Conduct of the Senate Rules and Administration Committee. Rule 55.2 of the Rules of the Minnesota Senate allows a member to seek the advice of the Subcommittee as to a possible conflict of interest.

On February 4, 2004, I presented, as chief author, two bills before the Senate Tax Committee. Senate File 15 calls for an increase of Minnesota's current long-term care insurance tax credit from \$100 to \$500. Senate File 1602 proposes to bring Minnesota's income tax treatment of Health Savings Accounts (HSA's) into conformity with the federal tax treatment of these accounts.

Rule 57 of the Rules of the Minnesota Senate provides for a two pronged approach to conflict of interest matters. The first prong goes to whether an action or decision substantially affects a member's financial interest or that of an associated business. The second prong goes to whether the effect on the member is any greater than on others in the same business classification, profession, or occupation. Both prongs must be answered in the affirmative for a conflict of interest to be found.

Outside of the Senate, I am a licensed insurance agent with, and the Vice President of, LeClair Insurance. I am a salaried employee there, and do not derive any of my personal income from commissions, nor do I hold any ownership stake in the company. My father, Ed LeClair, is the sole owner of all shares in the company.

LeClair Insurance acts as a "wholesale brokerage general agency" in the national life/health industry. Thus, we attempt to link (a) insurance companies who underwrite and distribute insurance products via a brokerage (i.e., non-captive) agent system, with (b) agents who need access to those products so that they may in turn sell them to their



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COMMITTEES: Commerce and Utilities; Health, Human Services and Corrections Budget Division;
Health and Family Security Committee

REPRESENTING: Central Washington County

clients. When an agent succeeds in making such a sale of an insurance product, that agent earns the bulk of the commission, but LeClair Insurance, having recruited and trained that agent, will earn a small commission for itself from the insurance company we are representing.

LeClair Insurance and I have recruited and trained agents across the country on behalf of over a dozen insurance companies, who collectively underwrite almost every type of product in the life/health industry, including, but not limited to, traditional major medical insurance, long-term care insurance, medicare supplement insurance, and dental insurance. We maintain offices in both Saint Paul, Minnesota, and San Diego, California, so that we may more effectively recruit and train agents in all parts of the United States.

I would respectfully submit to the Subcommittee that this is a huge, mature marketplace with a multitude of agencies and agents competing against each other to distribute, market, and sell insurance products. I would further submit that any legislative adjustment to consumer incentives and consumer finance options would have only an insubstantial, indirect affect upon those competing agencies and agents. Lastly, I would also submit that neither LeClair Insurance nor I are in any special position to benefit more than the other 6500 agencies and 42,000 agents in Minnesota should the government adjust consumer incentives and consumer finance options.

I look forward to the findings and recommendations of the Subcommittee as to whether carrying these bills or even voting on them, either on a stand-alone basis or as part of a larger omnibus bill, is a conflict of interest for me. I am available to the Subcommittee to provide additional information or testimony on my personal circumstances. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian LeClair", with a stylized flourish at the end.

Brian LeClair